

Public Administration

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Books for Review should be addressed to THE EDITOR.

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Summer Conference, 1930

THE programme of meetings arranged for this year's Summer Conference, to be held in New College, Oxford, 11th to 14th July, 1930, under the chairmanship of Mr. I. G. Gibbon, is as follows:—

Friday, 11th July.

- (10.30 a.m.) Personality in Public Administration.
Mr. E. H. Rhodes See page 250.
(2.30 p.m.) Right Relations between the Official and his Council
and their relative functions.
Mr. R. H. Jerman, M.C., M.A. ... To be published later.
Mr. D. Millar, F.S.I. See page 253.

Saturday, 12th July.

- (10.30 a.m.) Relation of Government to Organised Industry.
Mr. A. L. Dakyns, M.A. See page 259.

Monday, 14th July.

- (10.30 a.m.) How to fill higher posts; Appointment from without
or Promotion from within.
Mr. L. Hill See page 271.
Sir William E. Hart, O.B.E. ... To be published later.
(2.30 p.m.) Rationalising the Processes of Administration.
Sir Henry Bunbury, K.C.B. See page 275.

Personality in Public Administration

By E. H. RHODES

[*Paper for Discussion at the Institute of Public Administration
Summer Conference*]

THREE are some matters on which there is a conspiracy of silence. Everybody knows that they are of supreme importance, but they are not mentioned except in conversations of unusual intimacy over bottles. One of these is personality and the part played by it—or shall we use the old-fashioned word and call it character?

Now if we use the old-fashioned word, it is not in order to lead the argument on to the moral plane. It is no doubt an interesting question whether it is better to be good or to be clever. And most men if they were disposed to be introspective would admit that their failings, such as they are, have been more due to flaws of character than lack of brains. And when they survey with equable eye the shortcomings of other people they see this matter quite clearly.

But there are other categories besides goodness and badness. There is, to take the next most obvious example, strength of will and the absence of it. This is well recognised and no mystery is made about it. There is a demand for men of push and go. There may be anxiety as to how they will push and where they will go; but anyway something will be done.

It is when we pass from these simple thoughts that the conspiracy of silence sets in. We say—or at any rate the convention is to say or to imply—that the matters with which the Civil Service and the Municipal Service deal are matters requiring organisation, industry, and brains. This convention is respected. Nobody doubts that these are the things which are wanted, though it is sometimes doubted whether they are adequately supplied.

And yet we know out of our own experience two things. One is that organisation becomes lifeless; that industry by itself cuts no ice, except in matters of routine; and that brains are often exhibited in perverse ingenuities and unnecessary complications. The other thing we know is that there are councillors who govern the public life of their own town for a generation and town clerks who can speak with confidence for their councils because as a matter of fact what they advise is done. And no doubt the same kind of thing happens in the

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Civil Service and is observed by those who see it from outside. And we may reasonably infer that what appears in the outstanding examples is also true in a less degree or in smaller spheres.

These are manifestations of personality.

The question is whether personality is too much submerged in public administration. But before approaching this it will be useful to consider how it originates and how it works.

Personality is the fruit of experience. It follows from the organic nature of human beings that what they do when they are not engaged in imitation—which itself covers a great deal of their action—is largely governed by what they have done or suffered or thought or learnt. And, of these, what they have done or thought is, generally speaking, more important than what they have suffered or learnt. Hence if they have done or thought nothing in particular, their experience will not be particularly fruitful; and *vice versa*. Now this is not the same thing as saying that old age brings wisdom. All things being equal, an older man has had a longer time for getting wise: and that is all there is to it. The greater opportunities which he has had may be set off by the greater opportunities that a younger man has taken. Middle age, according to a recent article of Dean Inge, is best; but he hastens to add that at about 50 a fatty degeneration of the conscience is apt to set in: and he might have added that this process is often not limited to his conscience. Personality is not the outcome of age but of opportunities which have been taken, and particularly of those which have been sought.

We next ask, how it works. No doubt, in many ways: but two are particularly noticeable in public administration.

One is simplification. In an old society like ours everything is extremely complicated. Touch anything, and it has endless ramifications. The result is that there is great use for persons who can see their way, or make their way, through the complications, understanding them but not allowing themselves to be lost in them. As an instance of this, it has sometimes seemed to the present writer that the judges have better methods in dealing with points of law than civil servants have. The civil servant will allow the ramifications of the law to lead him until he reaches a conclusion which is not congenial but which he regretfully feels bound to take. The judge seems very often to look at the conclusion which he wishes to reach and to push about the intractable material in his way until he reaches it. This is not the theory, but it seems to be the practice.

The other is impatience—or perhaps it would be better to say, both patience and impatience. Persons engaged in public administration need to be patient, much-enduring men, like the ancient hero. But patience is not enough. The reason is that there is so much

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lethargy about. Bagehot in one of his books remarks that the quality most admired by the English people is an animated moderation. But the present generation is not in a position to be as complacent as the Victorian age. And in any case it was an animated moderation that he liked. Someone is needed to supply the animation.

Now these being the sort of ways in which personality shows itself, what is the likelihood that it is being too much submerged in public administration at the present time?

One the one hand it is likely that in the main the outstanding man comes out on top. On the other hand there are things which militate against the recognition of personality. One is the tendency already mentioned to ignore the importance of the human make-up. It is recognised by instinct, but it would be better to recognise it more frankly. Mr. C. R. Stampe, in a paper discussed at the January Conference, said:—"The tendency in any large organisation and in the Public Services in particular . . . is to underestimate the action and reaction of human nature"; and this is true in the present connection as well as in those which he had in mind.

Secondly, the trend of things in public administration has been in the direction of adding functions which require the employment of a very large number of persons doing much the same things. The sphere of routine is greater both absolutely and relatively than it used to be. As one of the sources of experience of the civil servant, like everyone else, lies in his own work, the mass of routine work is manifestly disadvantageous to the individual. This matter was dealt with to some extent in Mr. Stampe's paper and in the discussions upon it and will not be further considered here.

Lastly, we work under a system under which the public responsibility is not our own. It is that of a Minister or of a Council. Obviously, this limits the expression—or should one say, the exhibition?—of personality. But it seems profitless to discuss this, unless the discussion is to be widened so as to cover the system itself. It is asked whether public administration would gain if a personal element were allowed more play and more prominence, especially in the publication of reports and the like. But the publication of reports, assuming that they point to action and are not confined to statements of facts, has the effect, and cannot avoid the effect, of shifting the responsibility for action from the person to whom the report is made to the person who makes it; or at any rate it does so in part. This shifting or halving of responsibility is inconsistent with the theory of the present system and would probably lead to confusion in practice. The answer to the question whether personality is too much submerged in public administration is probably that it is; but the solution by way of publicity is barred.

Right Relations between the Official and his Council and their Relative Functions

By DANIEL MILLAR, F.S.I.
Solicitor and Chartered Surveyor

[*Paper for discussion at the Summer Conference of the
Institute of Public Administration*]

THE Local Government (Scotland) Act of last year may fairly be said to constitute for that part of Great Britain a most outstanding and important measure of reform in a sphere of public administration which most directly affects the social habits and amenities of the citizens. It is however a Charter of Opportunity and should be so regarded; it increases the responsibility of remanent local authorities and therefore increases their importance; if bureaucracy is considered a state of matters not to be desired, the structure of the Statute fairly and comprehensively applied will prevent or curtail its development; it has not seriously affected the functions of local government for these, like the running brook, go on by virtue of their appropriate legislative sanctions.

The reformed scheme of local government as now subsisting consists of the concentration of administrative functions in two main groups, namely, the county councils and the town councils within their respective areas as the sole financial and rate-levyng authorities; this policy was declared to be a necessary accompaniment of the scheme of rating relief, popularly known, though not expressly stated, as de-rating, in favour of ratepayers engaged in productive industry, including agriculture, and of the further important change in the financial relationships between the Central Government and the local authorities by the introduction of the principle of an annual consolidated or block Exchequer Grant based upon general characteristics and needs in substitution for discontinued assigned revenues and percentage grants.

The administrative changes were drastic in character; local authorities of ancient lineage though of modern designation with honourable records of work well done were dispensed with; their

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dispersal was deemed inevitable because they did not satisfy the criteria of sufficient financial resources and functional importance, and because certain major services were found to overlap. And so the powers and duties of the County Education Authorities in relation to education in counties and burghs, of parish councils in relation to poor-law in counties and burghs, of district boards of control in relation to lunacy and mental deficiency in counties and burghs, of district committees of county councils in relation to public health (in its widest sense), housing, town planning and roads, of Standing Joint Committees of counties in relation to police, have been transferred to the jurisdiction of the county councils of counties and the town councils of large burghs (*i.e.*, burghs of not less than 20,000 inhabitants as at the decennial census of 1921). The functions of small burghs have been curtailed, although they remain rate-levying authorities for services in relation to housing, minor public health and water supply, drainage and sanitation, &c., which they administer, and for the major services within the competence of the county councils as reconstituted and acting administratively in the small burghs.

The Act also created a new set of authorities in county areas and known as district councils; the powers and duties within their authority though necessary are quite unimportant, and their justification and usefulness will in the future depend very largely upon the policy of county councils in delegating functions other than those relating to police, education and rating upon the lines of functions remaining with and delegated to the town councils of small burghs with a view to maintaining that local interest and personal touch which Parliament has recognised are so desirable in the administration of local affairs.

The four chief towns of Scotland are each the county of a city with its own Lieutenancy and justices, and are completely self-contained units.

The reconstituted county councils are, for the purposes of rating, precepting authorities upon the town councils of the large burghs for the expense falling upon the ratepayers therein in relation to education (and also to police in appropriate cases) and upon the town councils of the small burghs for services administered therein by the county councils. In so far as the county councils exercise functions therein the town councils have representation on the county council varying in *quantum* according to population, &c., of the burghs.

Central Departments exercise a measure of administrative and financial control, and recent enactments have been followed by "an avalanche of ministerial orders, rules, regulations, circulars and memoranda which fall thick as leaves in Vallambrosa and rival in

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volume and complexity the statutes themselves."—(President of the Law Society at Bournemouth—1st October, 1929.)

The distribution in the functions of local government may be summarised as follows (the contractions T.C. meaning the town council of the burgh and C.C. meaning the reconstituted county council).

| Functions. | <i>The Four</i> | | | <i>Counties</i> |
|--|----------------------|----------------------|----------------------|------------------------|
| | <i>Chief Cities.</i> | <i>Large Burghs.</i> | <i>Small Burghs.</i> | (exclusive of Burghs). |
| 1. Education | T.C. | C.C. | C.C. | C.C. |
| 2. Police, | T.C. | T.C. or C.C. | C.C. | C.C. |
| 3. Poor law | T.C. | T.C. | C.C. | C.C. |
| 4. Lunacy and Mental Deficiency | T.C. | T.C. | C.C. | C.C. |
| 5. Roads (* only classified roads) | T.C. | T.C. | *C.C. | C.C. |
| 6. Public Health (major) | T.C. | T.C. | C.C. | C.C. |
| 7. Do. (minor) | T.C. | T.C. | T.C. | C.C. |
| 8. Housing | T.C. | T.C. | T.C. | C.C. |
| 9. Valuation for rating ... | T.C. | T.C. | C.C. | C.C. |
| 10. Rating | T.C. | T.C. | T.C. | C.C. |

Parliament as the law-maker has thus happily recognised that existing organisations are best suited for the due administration of functions which in the course of a century it has delegated to local authorities provided they are big enough and have sufficient financial resources for the highly important and increasingly multifarious powers and duties which have as their true objective the well-being of the inhabitants. The surviving authorities will go from strength to strength, and will thus exercise more authority in the initiation by Parliament of new policy.

For the due performance of functions a substantial power of delegation was manifestly essential, and so the Statute prescribed for the appointment of committees relating to education and (in counties) police and poor-law to which all such matters were to stand referred to the effect that the Council before exercising any such functions must, unless in the council's opinion the matter is urgent, receive and consider the report of the appropriate committee. All functions can be delegated except the power to raise money by rate or loan. Power is also given, subject to regulations by the council and to statutory limitations, for the appointment by committees of sub-committees and for delegation to district councils and the town councils of small burghs or a combination thereof. The Statute also provides for

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combination of authorities "for any purpose in which they are jointly interested."

The county councils have a statutory association of county councils in Scotland, created in 1894, for the purpose of consultation as to their common interests and the discussion of matters relating to local government. The town councils also have their consultative Convention of royal burghs, which has continued from the twelfth century, and is said to be the oldest institution of its kind in Europe.

Schemes for administration of transferred functions were prescribed and have now been promulgated after approval by Central Departments; new relationships have been established; it is therefore appropriate to desiderate the right kind of relationship between the official and his council, and to do so involves not merely a consideration of their relative functions, but an appreciation of how they came to be in office.

On the matter of the membership of councils it stands much to their credit and is a bright aspect in the conduct of public service in local affairs that men and women submit themselves to the will of the electorate, and if successful give freely of their talents and experience for the comfort and betterment of their fellow citizens. The continuance of the representative authority constituted at regular intervals by the vote of the citizens in preference to administration by executive officials as in America and other countries requires no plea for its justification in its application to British conditions. It is quite a feature in administration that in many instances members who have periods of service to their credit in carrying out the policy of the Legislature have become members of the Legislative assembly itself—a perusal of the official reports during the progress of the Rating and Valuation (Apportionment) Bill and the Local Government (Scotland) Bill reveals that most of the members who contributed to the debates in Parliament had personal and not merely derived knowledge of the structure and scope of local government.

But local authorities consist also of officials appointed by and accountable to the authorities. The official is a public servant equipped by and chosen for qualities and attainments which make, or appear to render, him suitable for the position he holds; in most cases he will be expected to have the professional qualifications appropriate to his office; in all cases he must necessarily be an administrator responsible for the due application of the law and practice in that branch of administration committed to his charge by the authority; he must appreciate and acknowledge the frontiers now only of his own jurisdiction but those of his colleagues; co-operative functioning is required in many aspects of administration in order to the true elucidation of problems, and the authority is fortunate when

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team-work whenever it is desirable and not merely necessary on the part of all the officials concerned produces that frictionless efficiency which lightens the labours of the council members and gives satisfaction to their minds.

Team-work is of the essence in successful administration; it should apply between authority and authority, central and local, member and member, member and official, and between official and official. But team-work, like charity, begins at home; the departmental chief will do well to regard the staff which he controls as composing a team of which for the time being he is captain—encouraging the production of good work and seeking to secure for his staff the reasonable fruits of their efforts. Moreover, the sense of loyalty which should exist upwards and downwards in any department of service will and should have compensating advantages in the relation between the official and his council.

The Council is entitled to get from its officials disinterested and efficient service within the limits of their functions; the officials are entitled to the support of their council, and may reasonably expect it whenever and just so long as their administration is within their competence.

It is the function of the council to determine policy; it is the duty of the officials to carry it out; but regard being had to the ramifications of local government involving specialisation in and devolution of departments of administration there are many matters involving policy which in the first instance will emanate from the official, because of his necessarily more intimate knowledge of what is required; in such case the council rightly expect to receive suggestions and advice for the betterment of existing policy or for the creation of new phases, and it is clearly the duty of the official to report them.

The delimitation of functions is essentially a matter of circumstances, but in practice little or no difficulty appears to have arisen in this connection, and therefore it seems unlikely that any difficulties will emerge in the re-organised scheme of local government; in the case of the official the nature and scope of duty is or should be indicated on appointment or prescribed when new legislation is operative.

The writer has not attempted a consideration of the technique of general administration, the reason being that as his functions as a public servant are limited in their scope he does not feel qualified therefor; the appropriate official for the complete canvass of the problem is the clerk of the county or town council as the chief administrative officer, the channel of communication between the heads of other departments and the committees or council and the custodier

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of records. It is perhaps desirable or permissible to explain that his functions as a lands valuation assessor and registration officer comprise within the ambit of statutory codes in his area of jurisdiction the duty of preparing the *annual Valuation Rolls* for purposes of local rating and the registers of electors for purposes of parliamentary and local government elections—quite a natural combination of functions which result in taxation and representation. “ the Assessor in Scotland is an independent official. He is appointed by the county council or by the council of a (large) burgh and he has a judicial function and is more or less independent.” (Royal Commission on Local Government—Minutes of Evidence—Part VIII. Scottish Office evidence, page 1,547 at Q. 25803.) He meets his Valuation Committee usually only once or twice in September yearly, after he has carried out his technical administrative and judicial functions, and when the committee are sitting as a court to adjudicate upon appeals which remain outstanding between him, as one of the litigants and the ratepayer as the appellant; in registration he is himself also a judge of first instance.

The State in Relation to Organised Industry

By A. L. DAKYNS, M.A.

[*Paper to be discussed at the Summer Conference of the Institute of Public Administration*]

FOR many years past the Census Department at Washington has from time to time published statistics illustrating the economic advance of the corporation—the American counterpart of our limited company. Besides throwing useful light on integrations of corporate administration and finance, these statistics show that whereas in 1904 corporations accounted for 70.6 per cent. of the total employed population and for 73.7 per cent. of the value of net output, they accounted in 1919 for 86.6 per cent. and 87.7 per cent. respectively. The exact figures for later dates are not before me, but there is no doubt that since 1919 the rise of corporations and the decline of private businesses and partnerships in respect of both these factors have been continuous. Nor is there any reason to doubt that if similar figures were available for Great Britain they would tell much the same tale of the progress of British joint stock enterprise in the present century. Unfortunately, the statistical information is meagre. The Registrar-General's last annual return shows that the paid-up share capital of English and Scottish companies still on the register runs into close on £5,000,000,000, and that they number more than 105,000. These figures represent an increase since 1910 of over 100 per cent. both in capital and numbers: but they are not on further analysis enlightening.

Take the first figure. Its astronomical size becomes less impressive when two facts are called to mind. It does not represent, except in part, cash actually paid; still less does it represent the value "on a reasonable valuation" of the total assets, tangible and intangible, of registered companies at a certain date. These two facts are not unconnected. Shares may be issued fully paid not only "for money" but "for money's worth," for example, against services rendered or assets taken over when a new company is formed or an existing one expanded. To refrain from valuing a company's assets higher in terms of shares of fixed par value than if cash were offered in exchange would be hardly human; and the humanity of promoters

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and directors on these occasions is notorious! Hence the frequent connection between the issue of shares otherwise than for cash and over-capitalisation. To the extent that over-capitalisation from this or any other cause occurs, to that extent the figure of £5,000,000,000 represents fictitious value or "water." In the sunshine of successful trading or rising prices such water may gradually evaporate: pools of it also are occasionally drained away when, with the consent of the Court, reconstruction schemes, involving a reduction or writing down of capital, are adopted. But the presence of "water" in uncertain quantities at any moment makes the collective item of "paid-up capital" an uncertain index of joint stock progress.

The second figure is even less informing. To the lawyer every company once incorporated is a potential object of interest: for have not the Courts attempted to define with precision the legal rights and responsibilities of these juridical persons? To the economist, on the other hand, the legal fact that companies have in twenty years doubled in number tends to obscure the significant fact that, mainly through the instrumentality of the law itself, which allows companies to be members, one of another, integrations of finance and control have in this same period proceeded apace over an ever-widening area of the industrial field. Fourteen years ago in a company case in which the legal status of a British subsidiary of a German company was in question Lord Justice Parker said of "control" that it was "an idea of which if not very familiar in law is of capital importance and is very well understood in commerce and finance." The Companies Act of 1929 will make this idea more familiar to the legal mind, for it imposes for the first time certain accountancy obligations on those companies which stand in a defined relationship of control to one another. But, even if the requirements of sections 125 to 127 of the Act were to enable the Registrar to supply details of holding and subsidiary companies, it is more than doubtful whether the information would be sufficiently comprehensive to satisfy the investigator, if only because a large number of companies which are *de facto* in control of others will escape the meshes of those clauses.

The fact of the matter is that the Registrar cannot out of the returns which companies are compelled to make throw very much light on their economic position. Parliament has never seen fit to impose on companies, registered or proposing to register, the obligation to disclose more information than will afford protection to shareholders and creditors, actual and potential. The freedom and secrecy in which these undertakings, like other types of private enterprise, pursue their economic ends are hardly affected at all by the provisions of the Companies Acts.

What is true of publicity is true also of the Board of Trade's

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powers of control. From Lord Hewart's point of view (vide *The New Despotism*) the Companies Acts must approximate to the ideal type of legislation, for they confer scarcely any administrative (as distinct from executive) duties on the Government. Both before and after granting his certificate the Registrar's discretionary powers *vis-à-vis* companies are so slight as to be almost negligible. His position in this respect contrasts with that of the Registrar of Industrial and Provident Societies (vide the evidence of the two Registrars before the Company Law Amendment Committee in 1925). And although the Board of Trade is also empowered to investigate a company's affairs, the power is not original; it can only be put in motion by a resolution of the holders of at least one-tenth of the shares. (See section 135 of the 1929 Act.)

Some distinguished economists (for example, the late Dr. Rathenau and more recently Mr. Keynes in *The End of Laissez-faire*) have suggested that joint stock companies are bodies which mediate between private and state-run concerns and tend, as they become large and venerable, "to socialise themselves." To make this idea seem plausible one must restrict the range of its application. Clearly it does not apply to private companies, which constitute about eight-ninths of those on the register and account for possibly one-half their paid-up capital; for the typical private company is of the "open vestry" type; in everything except legal fact it is owned and carried on by and on behalf of those who finance it. The typical "public" company, on the other hand, has features which seem to place the company as a going concern in a position of independence of its shareholders. Let us look at these features more closely.

An ordinary shareholder in a limited company if his shares are fully paid is not liable in any way for the past or future debts of the company. Why should he be? Money (or money's worth) has been paid over to the company in respect of the shares which he holds, and unless and until the company is in liquidation no shareholder has any claim to ask for any portion of that money back or for interest. Share capital is contributed not lent. But this sad position has two compensating advantages.

i. In addition to certain voting and other rights attached to his shares under the company's constitution, the ordinary shareholder has the right (equitable not legal) to receive from time to time, at the absolute discretion of the directors, and only of course in proportion to his share holding, any increment in the value of the company's assets beyond the nominal or par value of its share capital. This is what the net profit of a company, subject to income tax, has been judicially defined as meaning. It may be a true trading profit or it may arise, wholly or in part, because the company's assets have gone

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up in value. It is for the directors, however, not the shareholders to decide how this profit is to be appropriated. The former may, for example, decide year by year to place all profit, beyond a moderate amount sufficient to pay a conventional rate of ordinary dividend, to reserve. But even if their policy is in this matter ultra-conservative, the ordinary shareholders will have no cause for complaint: for if profits are steadily increasing while rates of dividends remain constant, they may reasonably expect to receive sooner or later a gift of bonus shares, representing the capitalisation of the undistributed profits of past years. And—this is the important point—that expectation will be reflected in the current market price of their shares *now*.

2. Shareholders in a public company enjoy the right (normally quite unrestricted) of selling their shares for what they will fetch through the medium of a stock exchange or otherwise. This privilege of transfer is without doubt the greatest single advantage which they enjoy. One may well call it a privilege, because it is directly derived from the privilege of incorporation: it is an economic consequence of an artificial and legal arrangement.

Thus the claim of the Ordinary Shareholder to the whole of the residuary net profits of corporate enterprise is a claim which is always in process of being liquidated. His financial reward comes to him not only by way of dividend but through the sale of his shares and through the issue to him of new shares *gratis*, or at a price below the price which after issue they will command in the market. That he cannot legally enforce a claim for dividend against directors, even when the profits are more than sufficient to enable one to be paid, is an important factor in the economic success of companies, a factor which redounds in the long run to his pecuniary advantage, since it enables directors freely to devote past profits to the earning of future profits.

Under these circumstances one must admit that public (no less than private) registered companies belong to the world of private enterprise and have no foothold in the world of public administration. Mr. Keynes' contention if it applies anywhere applies not to these bodies but to a much smaller group of limited companies—namely, those which are incorporated by special Acts or by Statutory Orders. These so-called statutory companies, though comparatively few in number (some 2,000) boast of a paid-up capital of about £1,370,000,000 (equal to more than one-quarter of that invested in registered companies), and they own assets which (for reasons that cannot be here discussed) would probably not at the present time, be over-valued at the same figure. The feature which more than any other distinguishes these companies from the 105,000 group, and

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justifies the "half-way house" epithet is this. In all of them the discretion of the directors is fettered by statutory provisions, which directly or indirectly restrict the amount of profit available for distribution to the ordinary shareholders whether in dividend or scrip.

A common example of indirect restriction is the fixing of maximum prices for the goods or services sold by the undertaking; a common example of direct restriction is the imposition of maximum rates of dividend. In the case of many statutory gas companies and some electric power companies the two restrictions are ingeniously combined in a sliding scale arrangement whereby dividends are allowed to vary above and below an authorised standard rate inversely to alterations in a standard price. Standing Order 188 of the House of Commons (adopted in 1877) makes it competent for the Committee on any gas company's Bill in which capital raising powers are sought to introduce this regulation into the Bill. (Those persons who collect evidence of the secret hand of the bureaucracy may be interested to note that this Standing Order was based on recommendations made by the Board of Trade in a letter dated 31st May, 1875, to the Chairman of the Select Committee on the Metropolitan Gas Companies' (Regulation) Bill.) That this mode of regulation has in normal times proved a success from the point of view both of the gas interests and of consumers is generally acknowledged. Owing, however to circumstances arising out of the war, sliding scales based on standard dividend were very generally thrown out of gear during the post-war period, with the result that Parliament and Government Departments (*e.g.*, the Board of Trade under powers delegated to it by section 10 of the Gas Regulation Act, 1920 and section 7 (c) of the Gas Undertakings Act, 1929) have seen fit in many cases to sanction scale modifications which involve the fixing of a basic or minimum dividend. In regulations such as these we are confronted with a type of public control more comprehensive than that suggested by the restrictions above noted; for the latter are clearly designed primarily to prevent the exploitation of the consumer under monopoly conditions.

The assumption is often made that Government in its economic relations exists solely to protect the consumers' interest. Regarded either as a theory of government or as an account of post-war policy in this country such an assumption is unwarranted.

The true *theory* seems to involve four essential propositions:—
(1) The ultimate aim of government is the economic welfare of the *whole* community. (2) With this end in view government should endeavour impartially to promote every man's interest as consumer, as entrepreneur, as employee, or as investor. (3) Any action of government which fosters exclusively or unduly any one of these

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four interests will in the long run prove injurious to all, including the favoured interest. (4) A *prima facie* case for government intervention is established when any one of these four interests is, or is in danger of being, oppressed.

As Sir Henry Bunbury has so well pointed out there is no virtue in governmental or any other form of external control as such. In other words control is only justified if it results in an all-round greater efficiency in the administrative unit to which it is applied. And the test of efficiency must—I take it—be a test satisfactory to each of the four interests concerned. If, for example, private investors do not get a square deal when they buy shares in public utilities the system of public control exemplified in the constitutions of these companies will be exposed to serious criticism. For under the investment system the main fund on which all industries rely for their capital is the fund of savings, voluntarily contributed. It follows therefore that a disturbance in any part of the industrial field which is calculated to frighten the private investor off is bound to affect adversely the prosperity of that area.

But is there any real ground for supposing that, even if the public utility area within the larger territory of the joint stock system were to be greatly extended, the holders of ordinary public utility stock would be hit financially? Is it not more probable that here, as in America, holders of these securities would, in return for a surrender of their claim to the whole of the residuary profits, receive an adequate *quid pro quo* in the shape of a promise of more certain and more regular dividends?

Since the war the intervention of the State in the sphere of public utilities has taken a new turn. By virtue of the Act of 1921 the railway industry has been reorganised on a national scale, and the merger companies placed on a footing as regards public control essentially different from that of their predecessors. The coal-mining industry is on the threshold of a like event. In deference to the same demand for better economic organisation and under pressure from above, the industry of gas supply is also, though somewhat slowly, being rationalised. In this connection it is worthy of note that the Gas Council, which represents practically all the gas undertakers of the country, both joint stock and municipal, has asked that reconstructions and amalgamations should in future be authorised not by Special but by Departmental Orders, so as to obviate the expense and uncertainty of obtaining parliamentary approval. What, one wonders, would Lord Hewart and Mr. Ramsay Muir have to say about that? It hardly suggests that gas company proprietors are sensitive to the dangers of bureaucratic oppression! Water supply is yet another great industry in which the separate units of adminis-

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tration, corporate and municipal, are being gently shepherded by the Ministry of Health into common folds for regional areas.

But in no industry of this or any other country has public control gone further *short of nationalisation* than in electricity supply. When he realises how great are the powers which the Act of 1926 confers on the Central Electricity Board, a shareholder in a generating company might well have qualms. Not only are such companies virtually compelled to choose between bringing their stations to such a state of efficiency as the Board may approve or seeing them closed down, but they must in the former event sell the whole of their output to the Board at a controlled price, buying back only so much as they require for their own needs. Yet the current price quotations of power company shares do not suggest that these provisions are unfavourably regarded by market opinion. On the contrary, the high average level of price, is the best possible testimony to the sound economics of the Electricity Supply Acts and of the schemes of co-ordination in which the Acts have so far resulted.

Public-utilitism (to coin a hideous word !) has also another argument to use with the private investor. The ordinary joint stock system, typified by the registered company, does not give and never has given him anything like a square deal. It offers him no sound economic guidance as to the best channels for investment; on the other hand, it has always appealed to that gambling or "money for nothing" instinct which is latent in every human breast—even the breasts of Scotsmen. This is not fair of it; for obedience to the gambling instinct leads much more often to the brink of financial ruin than it does to unmerited riches. The figures of company windings-up are admittedly an unreliable index of company failures, but the fact that, year in and year out, with almost monotonous regularity, one company goes into liquidation for every three companies that come on to the register is, to say the least, disquieting.

If any one entertains illusions about company formation, let him read Mr. Hartley Withers' *Stocks and Shares*, or better still, the reports of the Inspector-General to the Board of Trade in the early "nineties." They are an eye-opener.

In a review of the canal position at a time when some canal companies were paying enormous dividends a contributor to the *Edinburgh Quarterly* in the year 1825 compared canal investments to "lotteries containing a few large prizes with many blanks." Apply the same comparison to joint stock investments in general over any extended period of, say, ten years, and the aptness of the comparison will be apparent. Just as in a lottery the prizes are large because the blanks are many, and the blanks many because the prizes offered are large, so too, it might be said, the profits of invest-

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ment in the shares of registered companies are large because the losses are frequent *and the losses frequent because profits are sometimes large*, since the hope of large profits drives investors to risk their money in speculative companies.

"Reduce the risks of loss," says the Public Utilitist, "and the demand for exceptional profits on the part of the private investor will gradually disappear" ("and," adds the Socialist at his elbow, "a more equitable division of the product of industry among the interests concerned will thereby be secured").

One must agree that the intrusion of moral or ethical considerations into economic discussions makes for confused thinking—and leads nowhere. But moral considerations (which are generally also political considerations) are of great practical importance when it comes to a question of extending public control into a new field. For unless public opinion is sufficiently keyed up to recognise the urgent necessity for a change (as it undoubtedly was in 1919 in regard to electricity supply) the opposing vested interests will through the Press (which knows so well how to do it) play upon sentiment and prejudice until the public are lulled once more into a state of inertia and Parliament with a sigh of relief turns to other things.

It becomes, therefore, of practical importance to consider why it is that public opinion in this country is and has been for quite sixty years impassive and uncritical about the system which the Companies Act of 1862 inaugurated. Go back eighty or ninety years and the idea of a joint stock company is an idea everywhere charged with emotion. It carries with it associations of monopoly, or of bogus companies, masquerading as corporate, or of dealings in worthless scrip; inside and outside Parliament (especially in legal circles) the merits and morality of unofficial, uncontrolled joint stock enterprise are being hotly debated. The obvious answer, that the device of incorporation by registration (with the word "limited" annexed to the Company's name) solved all the legal difficulties and gave the business world just what was wanted is only a partial answer: it does not explain how a breach with a very ancient and deep-seated tradition was effected—the tradition that corporateness is a privilege, or as American lawyers still call it, a "general franchise" which is bestowed by the King in Council or in Parliament, not on all and sundry, but only on those bodies or societies which are able to prove to the satisfaction of the grantor that they intend to perform a function of definite service to the public. "The general intent and end of all civil incorporations," writes a lawyer in the seventeenth century, is for better government either general or special. . . . Special government is so called because it is remitted to the managers of particular things as trade, charity, and the like."

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The Act of 1862 made incorporation a formal affair, readily and cheaply obtainable by all joint stock companies, save only those which required, in addition to the legal and economic advantages of that status, a special privilege such as the right of eminent domain. These latter would, as formerly, still have to go with a petition to Parliament or the Crown direct. Prior to the company legislation of 1855-62 this way of approach was necessary for all companies (seeking incorporation with limited liability), unless, indeed, they were prepared to brave the Common Law objection to unincorporated bodies acting as if they were corporate. For the Act of 1825 (which repealed the Bubble Act of 1719) contained a clause that kept the Common Law objection alive. When, as a result of the new legislation incorporation by petition became merely exceptional, it was only natural that the traditional association of corporateness with ideas of privilege and public responsibility should perish. With reasonable certainty the date and place where the death-blow was delivered can be named.

The date was 1st February, 1856, and the place the House of Commons, where Bob Lowe was moving the second reading of the Bill which became the Limited Companies Act of 1856 (itself the foundation of the Act of 1862 just as that Act is the basis of the present law).

In the course of his speech Lowe used the following arguments :—

“ It is usual to say that as these companies come to the legislature for favours and for privileges we have a right to impose upon them what terms we choose—that we can make them submit to whatever restrictive law we like. Now I protest against the use of the word privilege in such a case as this. In matters of commerce and exchange of buying and selling and of contract it is impossible that under a just government there can be any privileges there is no privilege but a right to be conceded, a state of mischief to be corrected. . . . Any right the exercise of which is denied becomes a privilege, the very term privilege arising from the negation of a natural right. The process is this—it begins with prohibition, then becomes a privilege, and last of all, a right. Till 1825 the law prohibited the formation of joint stock companies. From that time to the present it has been a privilege, but now we propose to recognise it as a right.”

This speech is a good example of an appeal, partly moral, partly political, which, though founded on “ bad ” law and a (probably deliberate) confusion of ideas (privilege—legal right—natural right), was successful in camouflaging a concession by the State as a return of stolen goods. It was by these false analogies that Parliament was induced to conclude on behalf of the State a sort of concordat with

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the business world, which was, as it still remains, unilateral. Parliament has never secured for the public any adequate equivalent for the value of the economic advantages which the gift of a "blank charter" to companies has dispensed.

Would it be possible at this late stage in the history of the Companies Acts for Parliament to revise its terms? Probably not. What seems to be a more likely event is the entry of government into certain parts of the field of private enterprise as a kind of co-director, using the promise of capital or credit as a lever to secure reforms, and sharing in the division of the net profits. The changes which during the last eighty years have come about in the relations between central departments and local authorities may suggest analogies. In this sphere a kind of co-partnership relationship seems almost to have become established between the two; and, the grant-in-aid, now as a rule so administered by the central authority as to secure the maximum of efficiency and economy in the service aided, has been an essential instrument in the development.

When the Bill which became the Trade Facilities Act was under discussion in the House, the present President of the Board of Trade criticised it on the score that the effect of pledging the public credit as guarantees for company borrowings would be to increase the profit available for distribution among the ordinary shareholders; whereas, on the other hand, the scheme did not provide for the State participating in, or receiving a *quid pro quo* for this additional profit.

The wisdom of his criticism would probably be acknowledged on all sides to-day; for we seem already to have moved into a period when public bodies, the State included, will not be prepared to assist a voluntary or private enterprise unless the recipient is prepared to put his house in order.

Let me, finally, jot down some of the conclusions to which a desultory survey of an intricate subject has led:—

1. Our industries are mainly organised in registered companies.
2. These companies are compelled to furnish the government with certain particulars both before and from time to time after registration, but the information thus afforded is not from a statistical stand-point of much value in itself.

3. The Board of Trade is therefore unable to throw much light on joint stock affairs. The Department of Inland Revenue probably knows a great deal more about companies than the Board of Trade, because net profits (not dividends paid) are one of the sources at which our incomes are taxable. It is much to be desired that the Board of Trade and the Inland Revenue should pool the information at their disposal and produce an informative monograph on the whole position.

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4. Neither the Board of Trade nor any other Government Department has powers of control or influence over registered companies:—the Registrar's official title exactly describes his function.

5. Registered companies, whether “public” or “private,” are not in any intelligible sense “public bodies” or “semi-public bodies.” Lord Haldane once wrote:—“It is not right that inert capital should in the fashion of to-day dominate industry and take its residuary profits.” Substitute “expedient” or “economically sound” for “right,” and “blind” for “inert,” and the statement can be accepted.

6. Modern *statutory* companies are on quite a different footing as regards control. They *are* semi-public institutions, and the above quotation does not apply to them.

7. All statutory companies carry on public utility undertakings, and nearly all, nowadays, enjoy conditional monopolies; but the converse statement that all public utilities are statutory undertakings is not true (*e.g.*, non-statutory gas companies are actually more numerous than the statutory).

8. Within living memory our Courts have never laid down or referred to any legal principle which would enable the public and Parliament to distinguish between a public utility and a non-public utility. This means that every case for an extension of statutory control has to be fought for in Parliament on one of three grounds:—(1) that the industry or undertaking in question is closely allied to, or is operated on the fringe of, a State monopoly (*e.g.*, the transfer of the telephones to the Post Office, or the absorption of the cable companies under the recent merger scheme); (2) on the ground of urgent public necessity (*e.g.*, the powers given to the Electricity Commissioners and the Central Electricity Board or the transfer of liquor control in the Carlisle area to the Home Office); or (3) because exceptional powers (*e.g.*, right of eminent domain) are sought. The last reason is the commonest.

9. The position *re* public utilities is very different in America. Since 1876, when a decision on the point was handed down by the Federal Supreme Court in the case of *Munn v. Illinois*, the Common Law principle, regarding undertakings “affected with a public interest,” because they enjoy a legal or *de facto* monopoly, has been many times successfully invoked to justify an extension of statutory control. This principle which was derived from a treatise of Sir Matthew Hale in the seventeenth century was also clearly explained and followed in the English case of *Alnutt v. Inglis* in 1810: but it would be safe to say that 99 lawyers out of 100 have never heard of it, for the decision in that case has only *once* been referred to in an English

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case since. Public opinion (including legal opinion) is in the States very much more "advanced" than over here.

10. Public opinion in this country badly needs educating on the subjects both of joint stock enterprise and of public utilities. Bob Lowe "put over" a case for company law reform in 1856, on *laissez-faire* grounds. He misled Parliament; and the public has ever since been labouring under the same misapprehension.

11. To say that England was "made safe" for capital in 1862 would hardly be a happy way of putting it, considering the enormous risks which an uncontrolled joint stock system entails for the private investor; but England at any rate was made a very desirable place for capital to skip about in. The antics which it has played under the Companies Acts beggar description.

12. The case for extension of public control within the joint stock system is greatly strengthened if the private investor finds that the control improves rather than worsens his position as an ordinary shareholder.

13. As a result of post-war legislation public control has taken new forms. On the one hand nationalisation schemes have tended to fall out of favour, and on the other hand it is beginning to be realised that unless control goes the whole hog in achieving a scientific re-organisation of the administrative unit, it is going to have only a limited success. Past experiments in the way of "protecting the consumer" have frequently been failures.

14. The pledging of public credit may prove a more effective weapon than statutory compulsion in making extensions of public control popular as well as effective. The recent move of the Bank of England in setting up the Securities Management Trust is a very significant event; because it shows that the Bank is not prepared to assist industries financially unless they are willing under expert guidance to reorganise themselves.

How to Fill Higher Posts : Appointments from Without or Promotions from Within?

By L. HILL

[*Paper for discussion at the Summer Conference of the Institute of Public Administration, July, 1930*]

THE few observations which I have to offer under the above title must relate only to the Local Government Service; others will no doubt deal with the subject from the Civil Service point of view.

There is no uniform method governing promotion or even the making of appointments in the Local Government Service, and it would be extremely difficult whilst Local Authorities remain as at present constituted to attempt to apply one.

There are a few thousand Local Authorities of various types and sizes, and it is doubtful whether any two have a similar range of municipal administrative activities, or if any two departments bearing similar names could be said to be comparable.

It will be much safer to consider the alternative methods in the subject title in relation to the constitution and practice of Local Authorities operating to-day.

One important difference between the Civil Service and the Local Government Service is the absence in the former of any definable employer, whilst in the latter the Council clearly occupies the position of employer. Each council has its own ideas upon the qualification and standards of its officers. How these vary can be imagined from the fact that a Metropolitan Borough Council is composed almost wholly of professional men; a Durham or South Wales Council of miners; a Lancashire Council of hard-bitten business men, and a county council of farmers and landed proprietors. There is a tendency to judge the qualifications for an appointment or promotion in the Local Government Service from the angle of their own occupation or industry. In the industrial areas many councillors assume that the essentials to success in their own industry are the essentials to successful public administration. Prolonged industrial depression in a town sometimes leads to a cry for monetary sacrifices on the part of the local officials, notwithstanding the fact that the duties and

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responsibilities of the local officials have been increased by trade depression.

Sometimes the personnel of a council changes completely within a few years, and it has been the experience of many to find the standards of promotion completely altered within a comparatively short time. I must, however, say that these varying standards and methods are not in any way due to vested or political considerations but due to a new set of ideas taking the place of old ones with a change of local control. These considerations and many others must be kept in mind when trying to arrive at a decision upon the method of filling the higher posts. It will not help very much to arrive at a decision which will not work without a complete change in the system of Local Government.

Appointments from without do take place, and so does promotion from within, but in the few cases where "appointments from without" are made it is generally in a smaller type of Local Authority. The appointments to fill the more important posts would normally come under the category of "promotions from within." This must be qualified by explaining that I am looking at the Local Government Service as a whole and not at one particular Local Authority. It is the general practice in selecting principal officers to acknowledge service with other Local Authorities, and this is, I suggest, service "within." It is not an uncommon thing to find that an officer has graduated from a minor post in a small Authority through a number of other Authorities to his final position which may be regarded as one of the "plums" of the Service. Therefore, with regard to the Local Government Service the first part of the dual title "appointment from without" can only be dealt with theoretically, whilst the second part "promotion from within" can be considered in the light of actual practice spread over a large number of years.

There is probably only one officer in the Local Government Service whose qualifications cannot be obtained within the Service, and that is the Medical Officer of Health; he must be a qualified medical practitioner with a diploma in Public Health, and both these qualifications are generally obtained before entering the Service. It will, therefore, be seen that the Local Government Service can train practically all its principal officers, and the only interesting point that can be developed in a paper under this heading is whether it is desirable to make a change in the present practice in the Local Government Service.

When we come to consider the question of "How to fill the higher posts" we have to consider whether that means the highest posts in the Service or a place high in the ranks of subordinates. If it means the latter, then it cannot be applied to the majority of the Local

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Authorities because they are not large enough to practice the theory. If it is applied to the larger type of Authority, then we shall have to consider the effect upon those already in the Service of an influx at any given point of academically trained people from outside the Service. Is it wise to set up a barrier which is going to prevent free passage to promotion amongst those already training "within" the Service? The recruitment of theoretically trained public officers at any given point does not guarantee that every appointee is going to be worthy of further promotion. We have already seen the disastrous effect upon initiative in the large Authorities of grade barriers, and if these are to be made higher by piling on top corpses of theoretically prepared public administrators we shall make matters worse.

If appointment from without is to be applied only to the chief posts, *i.e.*, the heads of departments, then I think the difficulties are even greater. It is hard to define what kind of experience and training outside the Service can be a qualification for a chief position in any department of a large Local Authority. On the other hand, it is probable that a highly successful administrator in business or commerce would have to un-learn much of his knowledge and certainly adjust his methods before he could make a success of public administration.

We can approach the question from a third angle, that of supplying Local Authorities with academically trained men of the research type who could make a very valuable contribution to the science and technique of public administration. Very few Local Authorities could carry a man of this kind, and he would, by the make-up of his mind, never attain one of the highest posts in the Service. Therefore, he would have to be regarded as a new species, and to be passed by without the slightest hesitation in the progress of promotion. A successful Local Government Officer is a specialist; he has to apply his professional and technical knowledge to the technique of public administration, and there is no experience outside the Service which may be regarded as a suitable training ground. The doctor has to apply his medical knowledge to an entirely different set of principles to the doctor in private practice; the lawyer becomes a specialist and after a number of years as Town Clerk his knowledge of common law must inevitably become rusty. There are other things to be learned such as Committee procedure, how to avoid political party intrigue and perhaps the most important of all, "a passion for the Commonwealth."

One point emerges here, that men who obtain the higher and more important posts in Local Government are appointed more for their administrative qualifications than for their professional or technical qualifications. A chief officer or deputy may have secured his first

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"higher post" on his professional qualifications, but as he rises to take charge of the more important posts in the Service his professional qualifications recede in ratio to the development of his administrative abilities and experience.

During the last thirty years the general movement has leaned definitely towards the elimination of the part-time officer, that is, the man appointed from without, in favour of the whole-time specialist with experience in other districts. There is a philosophy as well as a technique in public administration, and I am perfectly sure that the former cannot be developed except by long experience within the Service. The deciding factor in the making of a successful and prominent Local Government Officer is the same as that which makes for achievement in every walk of life, and it is a biological one rather than an educational one. If public administration is a specialist occupation, then general experience is not a qualification. If special study and preparation from outside are to be regarded as essentials to promotion, then such persons should be recruited at a stage which will give ample time to apply those qualities to the specialist type of work which Local Government demands. Experience includes the making of errors, and it is less expensive to make them in subordinate posts than as chief officers. One cannot afford to make as many errors in the chief positions in the Local Government and Civil Services as he can in private practice, commerce or business.

I must come down definitely on the side of promotion within the Service with one proviso. Adequate facilities should be given to all in the Service to attain the professional and technical qualifications which are necessary to their progress from the staff to the highest posts. Success in Local Government is very largely dependent upon aptitude, and it is safer and more economical to add professional qualifications to proved aptitude within the Service, than to appoint from outside persons academically or professionally trained and leave to chance, or future proof, the peculiar aptitude so necessary to success.

Rationalisation and the Processes of Administration

By Sir HENRY N. BUNBURY, K.C.B.

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[*Paper for discussion at the Summer Conference of the Institute of Public Administration, July, 1930*]

DEMOCRACY, it is to be feared, is an expensive form of government. Apart altogether from issues of policy, with which this paper is not concerned, the machinery which it needs for the administration and execution of policy, whether it be that of a nation, a locality, or an association, is of a type which is costly in human effort. And, since what lies at the basis of "rationalisation" is the idea of using the minimum of human effort in the attainment of any desired result, it is evident that the application of the conceptions of industrial rationalisation to the processes of administration can only be pursued within quite definite and possibly somewhat narrow limits. So much by way of a preliminary warning—the more necessary because nearly all public criticism of government and municipal methods and technique fails to take account of just those things which compel them to be more or less what they are; of the functions which they are designed to serve and the forces and stresses which dictate their general design.

Within those limits, however, it has seemed to the writer to be worth while to consider how far it is possible to apply to administrative work the body of ideas, principles, and discoveries which, in the industrial sphere, is coming to be known, more conveniently than elegantly, as rationalisation, in the hope that a little new light may perhaps be thrown on old problems, and particularly on the oldest problem of all—that of reducing the cost of government to the governed.

The word has come to stay. The thing, however, has many aspects and is capable of a good deal of misunderstanding and misapplication. It is necessary, therefore, before talking about it, to state as clearly as possible what it means, and what its underlying principles are.

I will begin with two definitions, taken from Mr. Urwick's

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recent book.¹ The first is that of the World Economic Conference at Geneva in 1927. "Rationalisation, by which we understand the methods of technique and of organisation designed to secure the minimum waste of either effort or material. They include the scientific organisation of labour, standardisation of both materials and products, simplification of processes, and improvements in the system of transport and marketing." The second, shorter and more general, is by the present Chancellor of the Exchequer. "Rationalisation aims at such a reorganisation of industry as will eliminate all waste in production and distribution, and will utilise, to the full, mechanical and scientific knowledge and secure the co-operation of all the essential partners in industry."

Now I suppose that many people, coming across those phrases for the first time, would think at once, "but after all, is there anything new in all this? Is it not merely a description of what productive and distributive industry is, in all countries, trying to do all the time; and not only trying to do but, in the main, succeeding in doing by virtue of the forces of competition?" I confess that I do not find these definitions, or any definitions, altogether satisfying. It is description, not definition, that is needed, and to description we must turn, if we are to draw out the true significance of our subject.

Scientific management, F. W. Taylor used to say, is a mental revolution. It implies, as has been well said, the resolute abandonment of that instinctive search for arguments to defend existing convictions and habits which is common to all of us, and, in place of it, the thorough study and analysis of them. Now "rationalisation" is only scientific management writ large, and it is appropriate to begin an attempt to describe it by laying emphasis on the state of mind which it postulates. It calls for the scientific approach and technique in the handling of any industrial problem whether of organisation or of execution; for the careful ascertainment and quantitative measurement of the facts; for the inductive method rather than the *a priori* method of reaching conclusions. It aims, so far as is possible, at replacing "thinking" by "knowing."

At this stage I must invite attention to two significant words which occur in the definitions quoted above. It appears that rationalisation has much to do with the elimination of "waste," and, from Mr. Snowden's definition, that it implies "re-organisation." The implication is that there is waste to be eliminated, and that the existing organisation of industry is not perfect, but capable of improvement. So, if there is anything in it at all, we must start from the admission, or at any rate the hypothesis, that there is room for improvement. How then does it proceed?

¹ "The Meaning of Rationalisation." L. Urwick. Nisbet, 1929.

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The rationalisation movement has two main aspects. In the one, it is concerned with the organisation, either nationally, or in some cases internationally, of an industry or group of related industries as a whole. In the other, it is concerned with the internal organisation and performance of the single productive concern. The two aspects can only be formally separated, and the attitude which can sometimes be observed of regarding them as two independent things, and of laying stress on the one to the exclusion of the other, is the cause of much misunderstanding and some blunders. But, if this is borne in mind, there is some convenience in treating the two aspects separately.

In the rationalisation of a group of industries the object arrived at is the elimination of a class of wastes which are incidental to competition. One familiar example will serve to illustrate the process. If, say, several steelworks, each equipped for making the necessary variety of shapes and sizes, are combined into a single concern, it becomes possible to concentrate particular types of product at particular works; and so to eliminate the waste time and labour involved in adjusting machinery, obtain longer runs, and secure a larger output per unit of plant. If there is redundant capacity but no marked difference in efficiency, combination of this kind is the only way in which the waste of redundancy can be eliminated.

Over and above these primary gains in productive efficiency, combination makes it easier to secure directive ability, and to spend adequately and wisely on research. It enables strong selling organisations to be created. On the other hand, it suffers from certain weaknesses. It is apt to show over-capitalisation, since the independent constituent units have to be induced to come into the combination, usually on their own terms. Unless it commands great ability in its higher direction (and this experience shows to be at present a rather scarce commodity) there is a likelihood that the undertaking will be too big for the men who control it, and that inefficiencies in direction will take the place of the competitive wastes that have been eliminated.

Combination by amalgamation is, however, only one element in the rationalisation of an industry. It may be found necessary not to form combinations but to re-arrange them or even to break them up. The balance of advantage may in the particular case lie in the direction of some looser, and terminable, form of combination, in which the producing units retain their separate and, in a large degree, competitive identities. The essence of the rationalisation of industries as a whole is that it seeks to replace the blind efforts of competition by controlled production, in some form or other, to the fullest extent that the industry will permit, and at the highest attainable level of

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efficiency. It aims at the scientific balancing of available resources with demand; at the scientific organisation of the resources and the scientific measurement and development of the demand. And, with the same object, it seeks to create productive units of that size and composition which is most consistent with productive efficiency.

When we turn to the internal side of rationalisation, we are on more familiar ground. It is really what was earlier known as "scientific management." The fundamental object is the same—to eliminate waste of human effort and to secure the maximum of result from each unit of effort. But here the wastes which are in question are not the wastes of competition, but those which flow from traditionalism, neglect of science and scientific thinking, and failure to appraise rightly the human factor in industry. Its principal tools are planning and budgeting, the study of organisation, job analysis, costing and statistics, technical and economic research, simplification and standardisation, welfare work in general, and all those expedients of personnel management which have as their ultimate objects the replacement of the tradition of conflict between the management and the personnel by the sense of a community of interest, and its effective application in practice.

Such then, briefly and very inadequately stated, are the ideas and methods which have come to be known collectively as rationalisation. If the description is given in the rudest outline, it will at least, I hope, serve to make clear what is the principle on which it all rests—the principle of applying to the organisation and performance of industry the ideas, methods and technique of science.

I pass to the subject of this paper. Is there anything which Public Administration can learn from the rationalisation movement, and, if so, how far has it learnt it?

In attempting to give some answer to this question, I propose to say very little about the external aspect of rationalisation, which in its application to the work of government means the distribution of functions between departments and authorities, their relation to Parliament, and even the functions of Parliament itself. This restriction is necessary not only because without it this paper would be inordinately long, but also because matters of this sort seem to fall a little outside the territory proper to the Institute. Those who are interested may be referred to the Report of the Committee on the Machinery of Government, over which Lord Haldane presided (Cmd. 9230 of 1918), and which represented what is, I suppose, the first attempt in this country to think out on detached and scientific lines, what the organisation of the central instrument of government should be. The creation of the Ministry of Health, the scheme embodied in the Electricity Act of 1926, and the Local Government

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Act of 1929, especially that part of it which relates to poor law administration, may I think be claimed, without an undue stretching of language, to be attempts at rationalising important departments of public administration or public service. Their significance is that in such case there is a reorganisation of existing arrangements, brought about not by political demand but as a direct consequence of the scientific study by experts of the problems involved, and having as its object the increase of efficiency and the elimination of waste.

When one considers administrative processes in the light of the principles of the rationalisation movement, the first thing that strikes the attention is the quite remarkable extent to which those principles are applied, and have in some cases long been applied, in the public service. In "job study," as applied to clerical processes, the Civil Service is, I believe, at any rate in its more progressive departments, a good way in advance of the generality of business concerns; and I know progressive municipal authorities of which the same is true. Simplification and standardisation have in recent years been carried to a high degree in many fields. We have long been adepts at the application of the "budgetary" system of control, for the simple reason that in public administration, through causes which distinguish it sharply from commerce and industry, it is impossible to do without that basis of control. Methods of statistical control are by no means rare, and their use is increasing. In the mechanisation of clerical processes, and particularly in the study of that problem and the technique of handling it, there is much to which the Civil Service can point with legitimate pride. There are some aspects of personnel work in which Civil Service practice conforms to the highest standards of scientific management.

Yet, if the conclusion were to be drawn that the processes of administration are so highly and efficiently developed that there is nothing to be learnt from rationalisation, it would, I submit, be beyond what the facts warrant. There are fields as yet uninvaded, and forms or methods as yet untried.

Let me suggest a simple test, on the lines of the "job analysis" of scientific management. Take, at random, a few official files. They or rather the decisions which they embody, are a typical product of the departmental factory. Calculate, for each, as nearly as you can, the total cost, including all overheads, of the departmental labour put into it. Then ask, what the file is for; and, lastly, whether the results which that file has produced have been achieved at the minimum possible expenditure of human effort. I can conceive cases in which the application of this form of scientific management technique, resolutely pressed home, might lead to startling conclusions.

Again, the new science of Industrial Psychology—a thing far less

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forbidding than its title—plays a part of growing importance in the processes of rationalisation. It is applicable to fields in which in the public services the ideas of custom and tradition still often predominate. These are excellent things in their way, but they are bad masters. Industrial psychology has a good deal to say upon such matters as aptitude, selection, teaching and training, variation of work, the development of interest, incentive. Good as our public services probably are, in the main, in the attention which they give to these aspects of personnel management, he would be a bold man who would say that they have nothing to learn in these respects from the new scientific technique of ascertaining and weighing the facts.

Costing again—one of the foundations of scientific management. It is, in its application to the processes of administration, undeniably a difficult subject. The attempt some years ago to create a complete costing system for the Army was abandoned, on the ground that the results obtained were not worth the substantial expense of obtaining them. Possibly, as I myself am inclined to think, it was on wrong lines. To the advocates of ambitious costing systems the processes of administration are full of pitfalls, and there is some warrant for the notion not uncommon in business circles that "cost accounts are costly accounts." It is probable that the comparison of one administrative unit with another is less valuable than the comparison of the performance of one unit in one period with that of the same unit in another period. A certain amount of costing—tentative, cautious, and selective—is, however, attempted in public departments and authorities, and those who are familiar with the results would probably be found to agree that it could usefully be extended. The need for standards, carefully and scientifically fixed, which form a target to be worked to and improved upon, is very real. "Without financial costings," said the Balfour Committee, the most efficient and economical management is impossible"; and though they were speaking of industry, the proposition must be equally true—though the process may not be equally applicable—to administrative work.

There are other elements in the technique of scientific management which seem to be not wholly inapplicable to administrative processes, and might be so applied more freely than they are. I must content myself with two more examples. Scientific management pays great attention to eliminating all waste of material, and making the fullest possible use of residuals. We have our "residuals" in the memoranda and similar studies which are prepared to aid in the decision of particular questions, but which are seen at the time only by those immediately concerned, and when the decision has been taken go into the departmental limbo. There seems to be waste

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in the fact that material of this character, first-rate as it often is, does not achieve a wider usefulness. In a department in which I once served was an admirable practice of having such documents printed and circulated: and most useful they were. Apart altogether from their value in stimulating and guiding thought, they must have saved a large amount of labour in "mugging up" the subject or some aspect of it afresh every time it arose. Such documents are part of the process of making a decision; but I suggest that they have a by-product value which is far from fully realised. We are too apt to bury our talent in the napkin of the official file.

Files suggest registries: and the Departmental Registry is a ready-made research laboratory for the management engineer, as the Americans call him. I must not repeat what was said earlier about official papers, but will call up an example to illustrate the point. There was years ago a Department which at a time of stress and crisis was gravely concerned about the way in which the processes of administration were being carried out. In brief, it was felt that the efficiency factor was low, and dangerously low. It selected a high official, placed him in personal charge of the Registry, instructed him to observe from that point of vantage (it was a large department) what was going on, and armed him with powers to intervene and get things put right. He was not concerned with what the decision might be; but he was concerned to see that there was a decision taken at the proper time, and properly arrived at. I believe that the experiment, audacious as it must seem in the light of the normal attitude to the departmental registry, was successful. Perhaps few of us would welcome so heroic an experiment as that; but I may perhaps commend to the notice of those interested the idea that the registry may be a useful laboratory where the performance of the organisation can be studied and analysed from the point of view of the higher efficiency. Research, in every department of activity, is one of the big elements in scientific management.

Thus we come back once more to the fundamental principle of its technique—the use of scientific methods, resolutely pressed home, whatever the subject matter may be. That is what Taylor meant when he called it a "mental revolution." It has now for some years been carried beyond the field of industrial production into commercial operations and office processes. Its achievements in these fields have been significant. Admittedly its greatest achievements have been in what at any rate was once the home of industrial waste; and it is not to be expected that in our carefully organised, experienced and well-equipped public services, the same scope for its application should be found as has been found in industrial America. But it would be just as unwise to assume that there is here no scope for it

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at all. No one, I submit, who is really familiar with the internal working of our public services would venture to say that.

It must not be supposed that the task of applying its principles is easy, or that anyone can do it. It is difficult and exacting: it calls for specialisation, and time for thought, study and observation. It expects, as has been well said, more from the multitude of small stimuli than from the single big improvement. It succeeds, I think, in proportion as it substitutes the spirit of "team-working" for the temper and traditions of authoritarianism. And I think that, rightly applied, it enlarges contentment.

The Financial Systems of the United Kingdom and the United States of America

By T. E. NAUGHTEN, A.S.A.A.

[*Being the Winning Essay in the Haldane Essay Competition, 1930*]

AT first sight it might seem that the financial system which suits the United Kingdom should also suit the United States of America, seeing that the inhabitants of both countries speak a common language and are heirs to many common traditions. A little consideration of their respective histories, however, will speedily dispel this idea. The British Constitution, and with it, the financial system, which is the keystone of that constitution, has been the slow growth of centuries. The product of protracted conflict between the King, the Lords, and the Commons of England, it has come to us by easy stages, "broadening down," as Tennyson says, "from precedent to precedent." Though jealous of the rights of the people, it rests more on the broad basis of tradition than within the cramped confines of written laws. As befits its leisurely evolution, it is elastic and adaptable to circumstances as they arise.

The Constitution of the United States, on the other hand, sprang up, as it were in a day. It was the outcome of a revolt against a principle of taxation, and when the citizens of the new republic shook off what they conceived to be the tyranny of a ruler across the sea, they had no mind to set up a tyrant of their own. In their natural reaction against the old system, however, they went to the other extreme, with the result that the financial system which they established is so hard and inflexible as to hamper considerably the efficient transaction of the business of the State under modern conditions.

Despite constitutional differences between Great Britain and the United States, there is easily traceable one common principle. Questions of finance have had a profound influence on constitutional questions in both countries. The Civil Wars in England were largely concerned with the right of taxation. "No taxation without representation" was the rallying cry which lost her American colonies to England. The truth is that whoever controls the finances of a nation

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controls that nation's policy, and there has always been a clear appreciation of this fact in the minds of statesmen, both in the United Kingdom and the United States.

This being so, it is not surprising to find that in both countries the annual budget is the most important legislative enactment of the year. For reasons arising from the respective constitutions, however, the treatment of the budget in the United Kingdom differs widely from that in the United States.

Legal Basis of the Budget in the United Kingdom.

In the United Kingdom, the House of Commons—not Parliament—has control of the country's finances. All proposals for expenditure originate with the Crown, that is to say, under the present constitutional system, with the Ministry. The latter body, whose members are jointly liable, is entirely responsible for the form in which the estimates are presented to the House of Commons. The House of Commons may assent, or may refuse assent, to the proposals. It may decrease, but may not increase the amount proposed to be expended. The Cabinet, then, absolutely controls the initiation of financial legislation; but the House itself, having the right to refuse supply, can always ensure that its wishes are respected. While it is conceded that the last word on the subject should lie with the House of Commons, it is considered a sound principle, and one which affords the strongest security for economical administration, that the Ministry should be solely responsible for proposals of expenditure, seeing that theirs also is the task of proposing taxation to meet it.

In the United States, the Constitution imposes a rigid barrier between the executive and legislative departments of the government. It is the duty of the executive to report upon financial affairs for the information of Congress; but it has no powers of initiation. Congress sets on foot all financial legislation in addition to granting funds. This principle, as will be shown, is very far-reaching. Both of these important functions being exercised by the same body, there is none of that healthy conflict of interest which has developed the English system of control.

These radical differences in principle between the systems of the two countries have naturally led to variations in the method by which the budget is prepared and passed into law.

In England, some considerable time previous to the beginning of the financial year which has to be budgeted for, the Treasury, as financial representative of the Cabinet, calls upon the various departments for estimates of their fiscal needs during that period. When the estimates have been received it is the duty of the Treasury to

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subject them to a critical examination with a view to the elimination of proposals for unnecessary or wasteful expenditure. This criticism is not always popular with the departments concerned; but it is obviously reasonable that the Chancellor of the Exchequer, who will have to defend the budget as a whole and secure support for it from the House of Commons, should have the right not merely to decide the amount of supply to be asked for, but also how that amount is to be apportioned.

Important though the expenditure side of the national financial statement undoubtedly is, the revenue side is at least of equal importance. The difficulties of estimating expenditure, though not to be disparaged, are as nothing compared to the difficulties of estimating revenue, and it is here, as a rule, that the Chancellor of the Exchequer finds his most troublesome task. After receiving from the permanent officers estimates of the yield of existing taxes and of receipts from other sources, it is his duty to propose such alterations in the scheme of taxation as will, in his opinion, produce an equilibrium between revenue and expenditure. When this adjustment shows taxation on a downward trend, popular applause may be expected; but a Chancellor whose unhappy lot it is to propose increased taxation need not look for complimentary addresses.

The estimates of revenue and expenditure thus brought together form the budget of the coming financial year. Though many minds will have been brought to its making, the Chancellor of the Exchequer will be responsible for the whole and for every one of its parts. This unity of plan is rightly regarded as one of the most valuable features of the English system. It is a feature, as will be seen, which is entirely lacking in the system of the United States, greatly to the regret of financial experts in that country.

Since the Constitution of the United States insists upon the division of governmental authority, the direct consequence is that the budget cannot be prepared as a complete document either by the executive or legislative branches. It may, perhaps, be said to be initiated by the Annual Report of the Secretary of the Treasury which contains (1) a report on the fiscal operations of the past financial year; (2) an estimate for the coming year; (3) a pronouncement of the views of the administration as to the best fiscal policy to be pursued.

In spite of the great importance of this report, and the influence which it frequently exerts, it is, in the constitutional sense, merely a report for information. The "plan" is not recognised as a governmental policy, and no act of the executive can make it such. It may, and frequently does, carry considerable weight in the counsels of Congress; but this influence will be proportioned to the personal record and reputation of the incumbent of the office. The Secretary

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of the Treasury has no right of access to the floor of the House to commend his plan to its members. He cannot even attend a committee meeting except as a matter of courtesy. In short, he can only report his opinion, the proposal and passing into law of the budget being the act of the legislative branch of government solely.

Parliamentary Procedure.

We have already seen something of the method by which the estimates are prepared in England. When finally approved by the Treasury, they are presented to the House of Commons by command of His Majesty. They are then considered in a committee known as the Committee of Supply. This is neither a standing committee nor a special committee, but the House of Commons itself sitting as a committee, presided over by a chairman, and freed from the stricter rules of parliamentary procedure. When the various votes have been agreed to by the Committee of Supply—usually after certain selected votes have been discussed—it reports to the House, which then formally authorises the executive to incur the expenditure. Thereupon the Committee of Ways and Means, as its name implies, brings forward resolutions to provide the money necessary, up to the limit of the amount of expenditure voted. The Committee of Ways and Means, like the Committee of Supply, is a committee of the whole House, and enjoys the same freedom from the more rigid formalities which attend the proceedings of the House when in full session.

It should be noted that it is the estimates of expenditure only which are formally voted in detail. On the revenue side, the scheme alone is voted upon. The anticipated results, though referred to in the budget speech of the Chancellor of the Exchequer, are not embodied in any legislative act.

Consideration and discussion of the budget by such large committees, which necessarily include many people who have no expert knowledge of finance, cannot be regarded as an ideal system. Yet the plan works surprisingly well on the whole. It is usually found that a Committee will not listen with patience to a man who does not know his subject, and in consequence those who are really expert make their influence felt. Professor Adams, a leading American authority, endeavours to explain this phenomenon by saying: "It must be remembered by one who desires to understand the English Constitution that a healthy Englishman is by nature impolite."

In the United States, expert examination of the budget is also secured, but in a very different way. There, the report of the Secretary of the Treasury, together with the Book of Estimates on which that report is partly based, is submitted to the Speaker of the House of Representatives, who, having formally accepted it,

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passes it on to the appropriate committees of the House for consideration. The original intention of the framers of the Constitution was that the budget should take form on the floor of the House itself, but, as might have been expected, so soon as the financial transactions of the nation became more numerous and complex, this system became impracticable, and it was, therefore, found necessary to adopt the plan of discussion in detail by standing committees of the House.

All Committees of the House of Representatives are appointed by the Speaker, who is the leader of his party in the House. He naturally appoints the most influential men in his own party to the leading positions. In this way, party responsibility is established; but since it is important that the Speaker should obtain from the Committees bills that will excite the least opposition on their passage through the House, he usually takes care to appoint on each committee the leaders of the opposition, as well as the representatives of interests specially affected by any particular bill. In this way the exigencies of political warfare serve the purpose of strengthening the representative character of these vitally important committees.

Since the Committees thus include the strongest men of all parties in the House, it follows that, before a bill reaches the stage of formal presentation to the House itself, it will have found favour with, or at least exacted a reluctant assent from, those who, speaking politically, matter most. The discussion in the House, therefore, is more to give the less distinguished members a chance to air their eloquence and to comply with the constitutional requirements than to mend or end the measure.

Having passed through the House of Representatives by a vote of the majority, a financial bill goes to the Senate. Although the Senate cannot initiate financial legislation, that privilege belonging solely to the House of Representatives, it can, in the words of the Constitution, "propose or concur with amendments as on other bills." In this respect its powers are wider than those of the House of Lords, which has no constitutional right to amend money bills. In the United States this right is frequently exercised, and often in the direction of increasing appropriations for the public service. When a bill passes the Senate, nothing remains necessary to make it effective law except the signature of the President. He possesses the right of veto, but this is a right scarcely likely to be exercised in regard to a financial bill in these democratic days.

In the United Kingdom, the financial year begins on the 1st of April in each year, while in the United States the year opens on the 1st of July. It is a question of convenience in both cases, the governing principle being to have the final votes on the budget and the

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commencement of its legal operation as near in point of time as possible.

Construction of the Accounts.

Another principle which is common to both countries is that the accounts of the past year are presented in the simple form of an account of receipts and payments instead of according to the more elaborate method in use in France. In that country, the financial year is, as Bastable says, invested with a kind of personality. The accounts are kept open until all the revenue of the year has been collected, and all the expenditure charged, even though this should be years after the calendar close of the year in question. This system, of course, secures completeness, but only at the sacrifice of the advantage arising from the prompt presentation of accounts. Criticism of accounts three years old, when the Chamber is naturally more intent on the discussion of the current budget, can scarcely be other than perfunctory. The English system makes it possible to present the accounts of the past year soon after its close, and the Chancellor of the Exchequer is thus enabled to deal with the broad results of the past year at the same time that he attempts to forecast the prospects of the year just opening. Taking a long view, too, it cannot be said that the accounts thus presented are inaccurate, since normally what is lost in the way of revenue at the end of one year will be picked up at the beginning of the next. The simplicity and directness of the system far outweigh any theoretical shortcomings, and in spite of the special and rather surprising plea of Professor Adams for the adoption of the French method in the United States, the latter country would be well advised to retain its present plan of accounting.

In the United Kingdom, certain expenses such as the salaries of the Judiciary and the interest on the National Debt are not voted annually, but form a permanent charge on the Consolidated Fund. It is generally conceded that it is desirable to place these items beyond the reach of party animus, but apart from this consideration it is well to reduce the heavy task of voting supplies, so long as this can be done without weakening Parliamentary control. Although these charges do not come under the vote with the ordinary administrative expenses, they are brought within the purview of Parliament through the medium of the financial statement of the Chancellor of the Exchequer. Effectual supervision thus remains, and the unity of the budget is not impaired.

As against these two classes of expenditure in the United Kingdom, that is, annual and Consolidated Fund Charges, the system of the United States divides expenditure under three heads, namely (1) Annual, (2) Permanent Annual, and (3) Permanent Specific Appro-

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priations. The first head includes all ordinary administrative expenditure. The second covers the salaries of the Judiciary and other charges corresponding to the Consolidated Fund Charges in England. The third head, namely, "permanent specific appropriations," is unknown to the English system. It is intended to cover the case of appropriations for river and harbour works, lighthouses, fortifications, and other similar works which cannot be carried to completion in the course of a year. The appropriations are definite in amount, but indefinite in time. The idea is to ensure continuity of the work, thus avoiding any damage that might arise from its interruption. The principle appears to be a sound one, and is well worthy of consideration in England.

As already pointed out, the parliamentary practice in the United Kingdom is to vote on the scheme of taxation as a whole without reference to its anticipated results. The greater part of the revenue, however, arises from the operation of permanent Acts of Parliament, which naturally do not come up for annual review. The principal annual tax is the income tax, which fulfils a useful function in connection with the balancing of income and expenditure. The tea duty, which was recently repealed, was also voted annually, and performed a minor part in the accomplishment of the same difficult feat.

In the United States all revenue laws are permanent, that is, they remain in force until repealed or amended. The result is that there is no means of providing for an equilibrium between revenue and expenditure. The provision of adequate revenue for all years involves a surplus in ordinary years, since exceptional years must be looked for and guarded against. It will be shown later that the existence of this surplus as a frequent feature of the financial situation has had a demoralising effect on public finance in the United States.

Supplementary Estimates.

The difficulty of making exact estimates, and the occurrence of unforeseen expenditure, generally necessitates the provision of funds other than those authorised by the original budget. In England, these additional amounts are brought before the House in the form of supplementary estimates. The fact that the accounts are promptly closed on 31st March in each year, and that the Treasury has no authority to divert a surplus on one vote to meet a deficiency on another, makes these supplementary estimates more numerous than they would otherwise be. It is recognised that supplementaries are an evil, although a necessary one, and the constant aim is to confine them within the limits imposed by efficiency. As a matter of fact, the estimates in England compare very favourably for accuracy with those of other countries. According to Bastable, the estimates of

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expenditure in England for the three years 1st April, 1889, to 31st March, 1892, as compared with the results, show an error of only £137,000 in a total of £264,000,000, or a little over 1s. per £100. It may not reasonably be expected that such a high degree of accuracy can be attained under post-war conditions; but the attempt is at least being made.

In the United States, the position is not nearly so satisfactory. Owing to want of co-ordination between the various committees, and the consequent lack of unity in the budget, a Deficiency Bill is an inevitable feature of each session of Congress. According to Adams, the practice constitutes a temptation to the administration to withhold a full statement of its requirements on the original estimates, lest the latter be cut down. The line of least resistance is to come up again for a supplementary grant. On the approach of an election, too, the party in power may, for the purpose of "window-dressing," bring in a budget which looks very favourable on paper, but which has no real relation to the facts of the financial situation.

Faulty Estimating.

Whatever the extent of these influences, there is scarcely any doubt that the operation of the revenue system, which has in the past so frequently produced a surplus, is a potent cause of the laxity exhibited by American estimates. Ever since the protective policy was fully established, the government has had flowing into its coffers large streams of revenue which are not in any way related to the expenditure. The functions of spending and of obtaining revenue have thus been divorced, greatly to the detriment of real economy. To spend the surplus has, as Professor Plehn remarks, frequently taxed to the utmost the ingenuity of Congress.

That the English system is sounder in this respect is a statement that requires little argument. The aim is to have a small excess of revenue over expenditure, so as to avoid the possibility of a deficit. The annual taxes are the medium of adjustment, and United States financiers might well consider some similar arrangement. Gladstone put the English principle clearly when he said: "The training I received from Sir Robert Peel was that the right and sound principle is to estimate expenditure liberally, to estimate revenue carefully, to make each year pay its own expenses, and to take care that your charge is not greater than your income."

Control and Audit.

In both the United Kingdom and the United States there is an efficient system designed to ensure that the moneys voted by Parliament are expended in accordance with the declared intentions of

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Parliament and on no other object. The system in the United States is rather more elaborate than that in England, but it is unnecessary for our present purpose to compare the methods, which differ in detail rather than in principle.

Custody of the Funds.

The storage and safe-keeping of the funds is accomplished in England by utilising the machinery of the Bank of England. With the exception of certain local taxation assigned for local purposes, and also of certain departmental receipts known as "appropriations-in-aid," the Bank receives all revenue as collected, and pays out as required on the order of the Comptroller and Auditor-General. Although a government bank, however, it is important to observe that the Bank of England is not a State bank.

In the United States, the Federal Government acts as its own banker. The institution is known as the Independent Treasury, and has sub-treasuries at various points for convenience of collection. It has been urged that there is a danger in the withdrawal of so much currency from the banking system of the country, but, since the State Governments use private banks as depositories of their funds, the evil has never yet become so far-reaching as to affect prices.

Summing Up.

An attempt has now been made, within the limitations imposed by considerations of space, to note the particulars in which the financial systems of the two countries differ, as well as those in which they agree. The question which is the better system is, perhaps, somewhat invidious. It is permissible, however, to point out that, even on the admission of its friends, the American system is defective in some important respects. Probably the gravest defect is that the Secretary of the Treasury, who is nominally responsible for the estimates submitted to Congress, does not control their preparation. He has no constitutional or legal right to do so. He has no power to cut down the estimates of the heads of the various independent departments. His duty is merely to classify them, and to present the result as the Book of Estimates. There is no guarantee that just consideration is given to the requirements of different branches of the public service, or that the balance is held evenly between conflicting claims. If the Secretary of the Treasury makes a recommendation concerning a particular department, the head of that department, though but a minor one, may appeal to the members of the appropriation committee against such recommendation.

The result is what might be expected. Each department, freed from all effective control, and taking the amount of its appropriations

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as the measure of its relative importance in the departmental system, estimates its expenditure on the most lavish scale. Legislators themselves often make the national interest subservient to the obtaining of concessions desired by their own constituents, and to this end adopt the process known as "log-rolling," which signifies, amongst a group of members, a mutual pledge to support each other's schemes. Obviously, the aggregate of the estimates, under such a system, will be much greater than it would be were the unity of the budget an essential principle, as in England.

The next grave defect in the American system is that there is no legal obligation on the Committee of Ways and Means, which deals with revenue, or the Committee on Appropriations and other committees which deal with expenditure, to consult either with the Secretary of the Treasury or with each other. In these circumstances there is every reason to anticipate a large discrepancy between the two sides of the budget, and this is an expectation that is rarely disappointed. With the disappearance of the convenient annual surplus which has hitherto comfortably supported their extravagances, the financiers of the United States will be compelled to face the problem presented by this separation of authority.

Diffused responsibility is at the heart of the evil. Many Americans have seen this clearly, and have suggested the introduction of a cabinet system on English lines. This, however, would mean not merely reform of budgetary rules, but amendment of the Constitution. It would take a brave man to propose such amendment, and a strong man to carry it.

Viewed in the light of these considerations, the British financial system appears to some advantage. Nobody pretends that it is perfect, but, taken on the whole, it works well. Until a more efficient system has been evolved, we can only hope that the natural impoliteness which Adams attributes to the healthy Englishman will continue to exercise its salutary influence on affairs of State.

The Finance of Capital Expenditure by Local Authorities

By W. RILEY, B.A. (Admin.)

[*This Essay was Highly Commended by the Judges in the Haldane Essay Competition, 1930*]

ONE of the most noticeable features of local government is the enormous increase during recent years in the indebtedness of local authorities—an increase which appears to have aroused fears as to the financial stability of many authorities, and has evoked numerous outbursts against "extravagance," "wasting the rate-payers' money," &c.

This increase is shown by the following figures:—

| Year | 1913-14 | 1923-24 | 1926-27 |
|--------------|--------------|--------------|----------------|
| Loan Charges | £34,448,101 | £59,798,917 | £74,228,194 |
| Loan Debt | £562,630,645 | £820,262,540 | £1,027,857,547 |

[In considering these figures, it must be remembered that of the total debt outstanding at the 31st March, 1927, namely £1,027,857,547, £408,801,568 was in respect of trading undertakings, and £319,803,206 in respect of housing, which is a partly remunerative service.]

While not entertaining any fears as to the financial stability of our local authorities, many who are engaged in local government, whether as officials or as elected representatives, have begun to doubt the soundness of the policy which has resulted in the piling up of this debt—the policy of invariably resorting to borrowing in order to finance capital expenditure.

This doubt as to the soundness of the policy of continuous borrowing is not of recent growth, as is shown by the fact that a witness before the Joint Select Committee on Municipal Trading in 1903 deplored "the extravagance of the practice of continuous borrowing of small sums for work which has to be done periodically, such as paving and street drainage."

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That the matter is not of merely academic interest, but is of practical importance, may be seen from the following extracts from the Annual Report of the Ministry of Health for 1922-3:—

"In the interests of economy the Department have made it a practice to discourage the raising of small amounts by loan, in cases where the defraying of the expenditure out of revenue would involve only a very small charge upon the rates"; and from the Report for 1928-9: "These figures suggest that there is much to be said, not only for short-loan periods, but for a policy of meeting capital expenditure, as far as practicable, out of revenue. Works of unusual magnitude must generally be paid for by means of loans, but where capital works are being carried out year by year it should be possible to lay down a continuous programme which would in large measure equalise the work year by year and permit the expenditure to be met from revenue, not only without unduly increasing the burden on the rates, but with a reduction of it. This view is gaining a growing measure of acceptance by local authorities."

From these extracts it will be seen that the policy of borrowing whenever sanction can be obtained has disadvantages, and that, although it has been so complacently accepted and practised, it is by no means an ideal policy; there is evidently need for enquiry into the methods of financing capital expenditure.

The Effects of Continuous Borrowing.

When considering the effects of continuous borrowing, it must be remembered that in the case of loans for trading departments the loan charges will be met out of the income of those departments, and not out of the rates, unless the undertakings are run at a loss. Trading departments will, therefore, be considered separately at a later stage.

For illustration, suppose a local authority, following the policy of continuous borrowing, borrows £10,000 each year for 40 years, paying interest at the rate of 5 per cent. per annum. The following tables show the loan charges thus incurred under the different methods of repayment, Table 1, by the Instalment System; Table 2, by the Annuity System, and Table 3 by a Sinking Fund.

It will be seen that, in each case, relief is obtained in the earlier years, but that the total annual loan charge gradually increases until it exceeds the annual amount required for capital expenditure, namely, £10,000, and continues to increase until it is more than twice that amount. Also, in each case, the average yearly loan charge exceeds £10,000, and, in addition, there is a large amount of debt outstanding at the end of the forty years.

Loan Charges, assuming £10,000 borrowed each year for 40 years at 5 per cent. interest.

Table 1.—**REPAYMENT BY INSTALMENT SYSTEM—equal annual instalments of principal with interest on the debt outstanding.**

| YEAR | INTEREST £ | PRINCIPAL £ | TOTAL £ | YEAR | INTEREST £ | PRINCIPAL £ | TOTAL £ |
|------|---------------|----------------|------------|------|---------------|----------------|------------|
| 1 | 500 | 250 | 750 | 21 | 7,875 | 5,250 | 13,125 |
| 2 | 987 | 500 | 1,487 | 22 | 8,112 | 5,500 | 13,612 |
| 3 | 1,462 | 750 | 2,212 | 23 | 8,337 | 5,750 | 14,087 |
| 4 | 1,925 | 1,000 | 2,925 | 24 | 8,550 | 6,000 | 14,550 |
| 5 | 2,375 | 1,250 | 3,625 | 25 | 8,750 | 6,250 | 15,000 |
| 6 | 2,812 | 1,500 | 4,312 | 26 | 8,937 | 6,500 | 15,437 |
| 7 | 3,237 | 1,750 | 4,987 | 27 | 9,112 | 6,750 | 15,862 |
| 8 | 3,650 | 2,000 | 5,650 | 28 | 9,275 | 7,000 | 16,275 |
| 9 | 4,050 | 2,250 | 6,300 | 29 | 9,425 | 7,250 | 16,675 |
| 10 | 4,437 | 2,500 | 6,937 | 30 | 9,562 | 7,500 | 17,062 |
| 11 | 4,812 | 2,750 | 7,562 | 31 | 9,687 | 7,750 | 17,437 |
| 12 | 5,175 | 3,000 | 8,175 | 32 | 9,800 | 8,000 | 17,800 |
| 13 | 5,525 | 3,250 | 8,775 | 33 | 9,900 | 8,250 | 18,150 |
| 14 | 5,862 | 3,500 | 9,362 | 34 | 9,987 | 8,500 | 18,387 |
| 15 | 6,187 | 3,750 | 9,937 | 35 | 10,062 | 8,750 | 18,812 |
| 16 | 6,500 | 4,000 | 10,500 | 36 | 10,125 | 9,000 | 19,125 |
| 17 | 6,800 | 4,250 | 11,050 | 37 | 10,175 | 9,250 | 19,425 |
| 18 | 7,087 | 4,500 | 11,587 | 38 | 10,212 | 9,500 | 19,712 |
| 19 | 7,362 | 4,750 | 12,112 | 39 | 10,237 | 9,750 | 19,987 |
| 20 | 7,625 | 5,000 | 12,625 | 40 | 10,250 | 10,000 | 20,250 |
| | | | | | 26,740 | 205,000 | 481,740 |

Debt outstanding at end of 40th year, £195,000.

Average yearly debt charge, £12,043.

Table 2.—**REPAYMENT BY ANNUITY SYSTEM—equal annual instalments of principal and interest combined.**

| YEAR | INTEREST £ | PRINCIPAL £ | TOTAL £ | YEAR | INTEREST £ | PRINCIPAL £ | TOTAL £ |
|------|---------------|----------------|------------|------|---------------|----------------|------------|
| 1 | 500 | 83 | 583 | 21 | 9,282 | 2,957 | 12,239 |
| 2 | 996 | 170 | 1,166 | 22 | 9,634 | 3,188 | 12,822 |
| 3 | 1,487 | 261 | 1,748 | 23 | 9,974 | 3,430 | 13,404 |
| 4 | 1,947 | 357 | 2,331 | 24 | 10,303 | 3,684 | 13,987 |
| 5 | 2,456 | 457 | 2,913 | 25 | 10,619 | 3,951 | 14,570 |
| 6 | 2,934 | 553 | 3,497 | 26 | 10,921 | 4,231 | 15,152 |
| 7 | 3,405 | 674 | 4,079 | 27 | 11,209 | 4,526 | 15,735 |
| 8 | 3,872 | 790 | 4,662 | 28 | 11,483 | 4,835 | 16,318 |
| 9 | 4,332 | 913 | 5,245 | 29 | 11,741 | 5,159 | 16,900 |
| 10 | 4,787 | 1,041 | 5,828 | 30 | 11,984 | 5,500 | 17,484 |
| 11 | 5,235 | 1,176 | 6,411 | 31 | 12,209 | 5,858 | 18,067 |
| 12 | 5,676 | 1,318 | 6,994 | 32 | 12,416 | 6,233 | 18,649 |
| 13 | 6,110 | 1,466 | 7,576 | 33 | 12,604 | 6,628 | 19,232 |
| 14 | 6,537 | 1,622 | 8,159 | 34 | 12,773 | 7,043 | 19,815 |
| 15 | 6,955 | 1,786 | 8,741 | 35 | 12,920 | 7,477 | 20,397 |
| 16 | 7,366 | 1,958 | 9,374 | 36 | 13,047 | 7,933 | 20,980 |
| 17 | 7,768 | 2,139 | 9,907 | 37 | 13,150 | 8,413 | 21,563 |
| 18 | 8,161 | 2,329 | 10,490 | 38 | 13,229 | 8,916 | 22,145 |
| 19 | 8,545 | 2,529 | 11,073 | 39 | 13,284 | 9,445 | 22,729 |
| 20 | 8,918 | 2,737 | 11,655 | 40 | 13,311 | 10,000 | 23,311 |
| | | | | | 334,107 | 143,774 | 477,881 |

Debt outstanding at end of 40th year, £256,226.

Average yearly debt charge, £11,947.

Table 3.—**REPAYMENT BY SINKING FUND—accumulated at 3 per cent.**

| YEAR | INTEREST £ | SINKING FUND £ | TOTAL £ | TOTAL DEBT REDEEMED AT END OF YEAR £ | YEAR | INTEREST £ | SINKING FUND £ | TOTAL £ | TOTAL DEBT REDEEMED AT END OF YEAR £ |
|------|---------------|-------------------|------------|---|------|---------------|-------------------|------------|---|
| 1 | 500 | 133 | 633 | 133 | 21 | 10,500 | 2,793 | 13,293 | 37,840 |
| 2 | 1,000 | 266 | 1,266 | 403 | 22 | 11,000 | 2,926 | 13,926 | 41,901 |
| 3 | 1,500 | 399 | 1,899 | 810 | 23 | 11,500 | 3,059 | 14,559 | 46,217 |
| 4 | 2,000 | 532 | 2,532 | 1,266 | 24 | 12,000 | 3,192 | 15,192 | 50,795 |
| 5 | 2,500 | 665 | 3,165 | 2,072 | 25 | 12,500 | 3,325 | 15,825 | 55,644 |
| 6 | 3,000 | 798 | 3,798 | 2,933 | 26 | 13,000 | 3,458 | 16,458 | 60,772 |
| 7 | 3,500 | 931 | 4,431 | 3,952 | 27 | 13,500 | 3,591 | 17,091 | 66,186 |
| 8 | 4,000 | 1,064 | 5,064 | 5,134 | 28 | 14,000 | 3,724 | 17,724 | 71,895 |
| 9 | 4,500 | 1,197 | 5,697 | 6,485 | 29 | 14,500 | 3,857 | 18,357 | 77,909 |
| 10 | 5,000 | 1,330 | 6,330 | 8,010 | 30 | 15,000 | 3,990 | 18,990 | 84,236 |
| 11 | 5,500 | 1,463 | 6,963 | 9,713 | 31 | 15,500 | 4,123 | 19,623 | 90,886 |
| 12 | 6,000 | 1,596 | 7,596 | 11,600 | 32 | 16,000 | 4,256 | 20,256 | 97,869 |
| 13 | 6,500 | 1,729 | 8,229 | 13,677 | 33 | 16,500 | 4,389 | 20,889 | 105,194 |
| 14 | 7,000 | 1,862 | 8,862 | 15,050 | 34 | 17,000 | 4,522 | 21,522 | 112,872 |
| 15 | 7,500 | 1,995 | 9,495 | 18,423 | 35 | 17,500 | 4,655 | 22,155 | 120,913 |
| 16 | 8,000 | 2,128 | 10,128 | 21,104 | 36 | 18,000 | 4,788 | 22,788 | 129,329 |
| 17 | 8,500 | 2,261 | 10,761 | 23,098 | 37 | 18,500 | 4,921 | 23,421 | 138,129 |
| 18 | 9,000 | 2,394 | 11,394 | 27,112 | 38 | 19,000 | 5,054 | 24,054 | 147,327 |
| 19 | 9,500 | 2,527 | 12,027 | 30,452 | 39 | 19,500 | 5,187 | 24,687 | 156,934 |
| 20 | 10,000 | 2,660 | 12,660 | 34,026 | 40 | 20,000 | 5,320 | 25,320 | 166,602 |
| | | | | 410,000 | | 109,066 | | 519,066 | |

Debt outstanding at end of 40th year, £233,038.

Average yearly debt charge, £12,078.

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That this is not merely a hypothetical case may be seen from the following passage from the Final Report of the London School Board:—

"The question whether it is better to pay for land and buildings at once, or to borrow the money and spread the repayment over a term of years, has been so long settled that it appears useless to reopen it. But it may be interesting to point out that whereas up to 25th March, 1903, the Board had expended £14,567,256 out of Loan Account, out of Maintenance Account they had paid £6,396,972 for interest on loans and repaid principal to the amount of £3,695,956, making a total of £10,092,928. So that, of the total loans of £14,567,256, the amount of £10,871,300 was still owing, although the Board's payments for interest and principal had reached the sum of £10,092,928. If the Board had from the first met their liabilities for land and buildings at once, the effect would have been to increase the School Board rate during the first fifteen years by an average of about threepence in the £; but, in course of time, the rate would have gradually been reduced, and at the present moment it would have been less than it is by about a halfpenny in the £. In 1902-3 the amount paid for principal and interest was equal to about fourpence in the £, whereas about threepence halfpenny in the £ would have met the expenditure on land and new buildings and alterations in that year. These facts illustrate the financial effect of relying on the power of borrowing, even at low rates of interest."

Arguments Advanced against Paying-as-you-go.

Two arguments are usually advanced in support of borrowing and against paying-as-you-go. The first argument is that borrowing, by spreading the cost over a period approximately corresponding to the life of the asset, ensures that the ratepayers of each year pay their fair share, while the asset lasts. It is argued that if a policy of paying-as-you-go were adopted, present ratepayers would be burdened in order to hand over to posterity assets and amenities free from debt. The second is the so-called fructification argument, which is, briefly, that borrowing results in lower rates, and thereby leaves to the ratepayer more money to invest or to use in his own business; and, it is argued, he can earn on this money a higher rate of interest than the local authority has to pay on loans; therefore, a policy of borrowing is profitable to the ratepayers.

The first of these arguments appears to be based on a fallacy, namely, that each year's ratepayers constitute a separate body. The argument appears to overlook the continuity which exists between the ratepayers of successive years. Undoubtedly, the ratepayers do change—existing ratepayers depart, and new ones arrive—but,

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in general, the whole body of ratepayers changes very slowly. Accordingly, works paid for out of revenue will, in the main, be enjoyed by those who have paid for them. This will, of course, not be the case with works of great magnitude, such as a town hall, a reservoir, or a generating station, but it is not suggested by the advocates of paying-as-you-go that works of such magnitude should be paid for out of revenue: in such cases, it is agreed, the correct procedure is to borrow. Where, however, capital works are being carried out continuously, a programme could be drawn up which would enable capital works, excluding works of unusual magnitude, to be paid for out of revenue without hardship to the ratepayers, in fact, when the policy was firmly established, with great benefits to them, in the form of lower rates.

The argument that borrowing spreads the cost equally over a period of years is true when capital expenditure is incurred for large works, carried out at infrequent intervals. The argument loses its force when capital expenditure is incurred continuously: in such a case the cost can be spread equally over the various years by paying-as-you-go, and at less cost.

The "fructification" theory is somewhat vague. It cannot be dismissed as imaginary, but too much importance should not be given to it. Like the argument that borrowing spreads the cost equally over a number of years, it is true when capital expenditure is incurred for large works, executed at infrequent intervals, but loses its force when capital expenditure is being incurred continuously. In the first case, where large sums are required at infrequent intervals, to pay out of revenue the amounts needed as and when required would be a severe strain on the resources of the ratepayers, and would probably ruin many of them; in this case borrowing enables them to retain large sums for use in their own businesses or for investment. When capital expenditure is being incurred year after year, usually in relatively small amounts, borrowing will undoubtedly result in savings in the earlier years, but, in the case of the average ratepayer, the amounts thus saved would be small, and would probably be spent, not invested. Since fresh sums are being borrowed each year the loan charges will be increased each year, and after a short period will exceed the amount required annually for fresh capital expenditure. Thus, as a result of borrowing, larger sums will be taken from the ratepayers each year than would have been necessary if a policy of paying-as-you-go had been followed, thus leaving them less to be invested or used in their own businesses. But, it may be objected, if the average ratepayer would save only a small amount in the early years as a result of borrowing, he would also save only a small amount as a result of paying-as-you-go. Therefore, why bother to effect a

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change? The important point is that borrowing gives in the earlier years only a temporary relief, followed by heavier burdens over a long period, while paying-as-you-go gives, after the first few years, a permanent relief. Also, high rates, besides taking more money out of the ratepayers' pockets, have a psychological effect: they provoke ignorant and uninformed outbursts against "municipal extravagance," and thus tend to restrict municipal enterprise.

The ratepayers who derive most benefit from lower rates are the large industrial and commercial concerns, and in their case a reduction in rates would assist trade. A policy of paying-as-you-go, once firmly established, would result in a permanent reduction of rates, and thus give permanent assistance to trade and industry.

Another argument which has been advanced against paying-as-you-go is that it would result in stagnation. As just stated, high rates tend to restrict municipal enterprise: a local authority which was unburdened by debt would be freer to carry out desirable schemes for social improvement, such as parks, baths, libraries, &c., than would one burdened by a large debt and high rates. This does not mean that local authorities could afford to be extravagant—just the opposite; if works were paid for as executed, more care would be taken in deciding with which schemes to proceed than is often taken when schemes are to be financed by borrowed money.

Paying-as-you-go does not mean, as this argument seems to assume, that if an authority cannot pay for a scheme out of revenue, then it should not carry out that scheme: that would end all progress. If the scheme is necessary for the development of the area, or for the health of the inhabitants, it must be carried out and financed by borrowed money, particularly if the scheme will increase the rateable value of the district. Those who favour paying-as-you-go do, however, assert that borrowing which is necessary in the case of large schemes, is extravagant when resorted to continuously, and that where capital expenditure is being incurred, not for large, isolated schemes, but continuously, year after year, then a policy of paying-as-you-go will be more economical.

Methods of Effecting a Change of Policy.

There is a considerable amount of agreement that the policy of continuous borrowing is uneconomical, and that a change in the direction of paying-as-you-go is desirable. The question then arises: How is this change to be effected? A complete change of policy cannot be made at one step, because such a change would impose a double burden on present ratepayers, and, with the present high level of rates, this double burden would in many cases be unbearable. Any change must, therefore, be brought about gradually.

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An indispensable preliminary to any change is a report on the subject by the chief financial officer, dealing with the existing debt, present and probable future capital commitments, and showing the estimated loan charges for a considerable period ahead—certainly for not less than ten years.

Many local authorities have made progress in the direction of paying-as-you-go by deciding that all items of capital expenditure below a certain figure shall be paid for out of revenue. The limit fixed will vary, of course, with the size and resources of the authority concerned. The amount to be so spent may be further limited to a definite total sum or to the product of a rate of so many pence in the £.

A method which ensures that definite progress will be made, and which, at the same time, prevents fluctuations in the rates, is to appropriate in each year, the proceeds of a definite rate in the £ to pay for items of capital expenditure below a certain figure, for which sanctions would be granted for only short periods. If all the proceeds of the rate so levied be not required for this purpose, the excess may be applied in reduction of debt. Care must be taken in fixing the amount of rate to be raised for this purpose, in order to ensure that the amount so raised shall not fall short, save in exceptional years, of the amount required for this class of expenditure. The position should be reviewed periodically, and as the total debt diminishes, and consequently the annual debt charges diminish, the amount appropriated may be increased, and in this way progress be accelerated. In addition, any special receipts, such as from the sale of capital assets, could be used to redeem debt.

It would also be a step in the right direction if local authorities, where recourse must be had to borrowing, instead of borrowing for the longest periods for which they can obtain sanctions, would borrow for shorter periods, thus reducing the total amount to be paid in loan charges, and not burdening the ratepayers with a heavy charge for a long period.

Where the rates are not unduly high, a great step could be taken towards paying-as-you-go by stabilising the rate for a number of years at a figure which, while not being so high as to cause hardship to the ratepayers, would yet provide sufficient funds to adopt a policy of paying for smaller items of capital expenditure from revenue, as mentioned above: any savings in other directions would then be available for an extension of this policy, or for redemption of debt. Rates cannot, of course, be stabilised formally, as a council cannot bind its successors, but this can be done, in effect, if there be a real desire for reform, and agreement that stabilisation is a suitable method of achieving this reform.

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In the case of those authorities where rates are very high, the prospects of making any change at present are rather remote, as the most urgent need is to reduce the rates in order to stimulate industrial and commercial activity. In such cases the method of rationing—of revenue and of capital—would appear the most hopeful solution. In this way rates could be reduced, and, by rationing of capital great increases in debt be prevented, and, possibly, a change in the direction of paying-as-you-go be commenced, in a small degree.

In adopting any method of making a change, notice must be taken of the ban placed by government departments on local authorities charging to revenue capital expenditure on grant-aided services, in spite of the fact that the general practice of the State is to pay for capital works, except revenue-producing works, out of revenue. The services seriously affected by this are Education and Housing. It would be necessary, before including Education expenditure in any scheme approved by the council, to come to an agreement with the Board of Education as to the manner in which this expenditure would be treated for the purpose of calculating the government grant. Expenditure on Housing should be excluded from the scheme, on account of the method of financing housing schemes and of calculating the grant.

Is a Special Fund Necessary?

In some quarters the view is held that local authorities should have power to establish an Equalisation Fund, to enable them to pay for capital expenditure from revenue, by setting aside a fixed amount each year; any sums remaining unspent at the end of the financial year would be carried forward in the fund to the following year. At present local authorities have no power to establish a fund of this nature, but the same result may be achieved by including in each year's estimates the sum to be set aside, and carrying forward any unspent portion of this sum in the general balance. This method, however, has no advantages over the practice of using any unspent balance of the sum raised for capital expenditure in reduction of debt. If this is done, it may be necessary to borrow if in any one year the amount required for new capital expenditure exceeds the sum raised for that purpose; this would be avoided by an Equalisation Fund, but, as in the former case the amount of outstanding debt would have been reduced by the amount which, in the latter case, would be carried forward in the fund, the actual effect would be the same in each case. The only advantages which can be claimed for a statutory Equalisation Fund are that action which takes this form seems to be more definite than action by resolution of the council; and that the monies so raised cannot be "raided" so easily.

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An illustration of "the modern tendency to attempt to spread expenditure as evenly as possible without recourse to unnecessary borrowing" (Report of the Ministry of Health, 1928-9) is the "Purchase of Lands Fund" which Sheffield obtained power to establish by a local act in 1928. The fund is to be used to purchase or lease lands and buildings which the Sheffield Corporation wish to acquire for any of their undertakings, or for the general improvement of the city: it is to be accumulated by means of annual appropriations from the rates not exceeding in any one year the product of a rate of 2d. in the £, and is not to exceed £50,000. This fund should enable the Corporation to avoid borrowing for the purchase of land and buildings which are required for street improvements, and is an example which might with advantage be followed by other local authorities.

A more ambitious proposal was that contained in the Coventry Bill of 1927. The Coventry Corporation sought power to establish a Capital Fund by accumulating (1) profits from trading undertakings, and (2) capital funds which were not required by law to be applied to any other purpose. The fund was to be used for any authorised capital expenditure, especially where small amounts were concerned, and also for the general benefit, improvement, or development of the city.

The proposal was opposed by the Ministry of Health on the ground that it would give to the Coventry Corporation too wide powers, outside the supervision of the Ministry. The application was refused, but the Local Legislation Committee "expressed the view that a limited power to receive and administer gifts, &c., would be a legitimate extension of a local authority's powers," and suggested that English local authorities be given, by general Act, powers similar to those possessed by Scottish authorities to establish a Common Good Fund.

The proposal to carry to the fund profits of trading undertakings raises the question as to whether it is fair and equitable to levy indirect taxation, in the form of higher tram-fares, water rates, gas and electricity charges, &c., in order to obtain money to be used for capital expenditure or for the general development of the city. This is a large question and cannot be discussed here, but the general opinion is that the profits of a trading department should be used to extend the service or to reduce charges, though a small contribution in aid of the rates may properly be made, since any losses of the trading department will have to be made good from the rates.

Trading Departments.

In the case of trading departments attention must be paid to the

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amount of profits which are available when prices are such that they will enable the department to develop and expand. It is also necessary to render possible this development by new works as and when required. From these considerations, and from the fact that trading departments vary considerably in size and resources, it is evident that no hard and fast rule can be laid down as to how much, and which particular items of, capital expenditure should be met from revenue.

There does, however, seem to be room for extension of the practice of paying out of revenue for short-lived works, and for items on which expenditure is being incurred continuously, such as gas meters and stoves, and, in the case of electricity, meters, wiring of premises and provision of apparatus on hire or hire-purchase, if this can be done without raising prices so as to restrict developments, and without necessitating a contribution from the rates.

In a general circular issued in November, 1927, the Electricity Commissioners indicated their general approval of the practice of meeting continuous expenditure on short-lived works from revenue, and gave their consent to the application of "the net surplus in payment of expenses of providing works as aforesaid in all cases where the reserve of the electricity undertaking is not less than one-twentieth of the aggregate capital expenditure, subject, however, to the amount so applied being not more than 5 per cent. of the revenue of the year in which the surplus was obtained."

In the case of other trading undertakings there are no such restrictions on the amount of capital expenditure which may be met out of revenue.

The Civil Service of Poland

By JAN KOPCZYNSKI,

President of the Polish Supreme Administrative Tribunal

ONE of the most important tasks of the restored Polish state was the creation of an administrative machinery necessary for government and the issuing of adequate regulations which should establish the relation of the officials to the state, and establish their functions and duties. Accordingly, as early as 1918, i.e., on 11th June, the former Regency Council issued "Temporary Service Regulations for Civil Servants."¹ These regulations not only applied to officials of the so-called political administration, but also to all other kinds of state officials, such as magistrates, teachers, railway officials, police officials, etc. These regulations were based on the principle of the relation in public law of the official to the state, and *inter alia* introduced the idea of the so-called automatic stabilization of officials. Article 24 provided that after five years' service duly appointed state officials had the right of permanent servants in so far that they could not be deprived of their office or dismissed except as a disciplinary measure, or as a result of a court verdict. Magistrates were entitled to this right after three years' service.

It is obvious that these regulations were only binding in that part of the country where the authority of the Regency Council held good, i.e., in former Congress Poland. Thus in the other parts of the Republic which by virtue of international treaties comprised part of the Polish state the regulations of the Partitioning Powers were in force. This was the case in Galicia, in the former Prussian provinces, and in the Eastern borderlands of the Republic which were assigned to Poland by the Treaty of Riga concluded with the Soviet Republic. The very title of the regulations "Temporary" and furthermore the annexed mandate of the Regency Council shows clearly that they were only of a temporary character. When the growth of the administrative machinery of the state required a unification of the regulations pertaining to civil servants throughout the Republic and a more detailed conception of the standards regulating their condition, and furthermore when the complicated and varied tasks of the different administrative departments called for other regulations to govern the civil servants of the different departments

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the so-called Civil Servants' Act, which is binding throughout the whole of the Polish Republic, was passed by the Polish Diet on 17th February, 1922. Another Act dealing with Organization and Powers of Disciplinary Authorities and Disciplinary Procedure with regard to state officials was passed at the same time.² Both of these laws³ are applicable exclusively to officials of so-called political administration, and are therefore not applicable to magistrates, procurators, officials of the state railways, teachers of all Government schools, post and telegraph officials, except in the case of some categories where a number of the provisions are applicable as long as they are not contrary to the regulations pertaining to remuneration or to special regulations arising from the nature of such officials' service. Of the above mentioned this refers to post and telegraph officials and to officials under the control of the state, not mentioned above, such as police officials, customs officials and prison officials.

With regard to those officials to whom as is said above, these Acts do not refer, the functions of some of them have been regulated by later laws or Orders of the President of the Republic having the power of laws, as, for example: (a) the functions of magistrates and procurators by an Order of the President of the Republic of 6th February, 1928,⁴ (b) the functions of teachers by a law of 1st July, 1928,⁵ (c) the functions of railway officials by an Order of the Council of Ministers of 8th July, 1929,⁶ (d) the functions of police officials by an Order of the President of the Republic of 6th March, 1928,⁷ (e) the functions of the frontier guard by an Order of the President of the Republic of 22nd March, 1928.⁸

Furthermore, an Order of the President of the Republic of 7th March, 1928,⁹ in respect of the organization of prisons amplifies the relevant regulations as regards prison officials contained in the above-mentioned law in respect of civil servants.

Thus up to the present only post and telegraph officials are without special regulations governing their functions, so that the above-mentioned temporary service regulations of the Regency Council are still binding in their case in former Congress Poland, while in the other provinces enumerated above the regulations of the former Partitioning Powers are still in force.

All the above laws and orders set forth the services of the different officials under the categories of public law stressing their rights and functions with greater or less emphasis, and in particular where the rights of the officials to the so-called immunity from dismissal are concerned, it regulates them according to the principle adopted in the law in respect of civil servants with such amendments and additions as may be required by the nature of the service of these different officials.

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It must be noted that on the whole the regulations pertaining to state officials not subject to the law in respect of civil servants are to a lesser or greater extent based on this law; accordingly, a knowledge of the principles of this law is sufficient for a general understanding of the legal position of state officials in the Polish Republic.

Before expounding the principles underlying the law on state civil service, it must above all be borne in mind that the law deals exclusively with officials of so-called political administration, as was mentioned above, and these are divided into: (1) officers, and (2) civil servants of a lower grade.

There are two kinds of officials, permanent and temporary. The relation of both these kinds to the state is regulated by public law* as opposed to "contract" officials whose existence is admissible by the above law, which mentions them casually in Article 14; their duties and functions are regulated by each individual agreement, and their relation to the state is, therefore, regulated by private law.*

As regards standard of education, the Act divides the officials, or posts, into three groups, viz., posts requiring (i) higher education, (ii) secondary education, (iii) the completion of an elementary school or third class of a secondary school (lower education).

The recruiting of officials is carried out in the following manner. Before nomination the candidate must do at least one year's probationary service. Then not until he has passed the required practical examination can he be nominated for permanent service. This procedure is not necessary in the case of temporary servants. However, it is nowhere laid down in the Act that a candidate having done his year's probationary service and passed the required examination must unconditionally be appointed to permanent service; on the contrary he may be appointed to temporary service.

The conditions of an official's service is fixed at the time of his nomination, the form and substance of which is laid down in Article 4 of the law; service dates from the actual date of service and not from the date of nomination. Provisional and probationary service become permanent service if the official obtains nomination direct from this service into permanent service; contract service depends solely upon the sanction of the relevant authority. Upon taking up service permanent officials are obliged to lay before their relevant authority their oath of allegiance to the service, while temporary servants and probationers only hand in their signed agreement.

As regards the hierarchy of the service, the law provides for twelve grades; the first category requires higher education and begins with the eighth grade; the second category (secondary education) begins with the tenth grade and the third category (lower education) with the

*It is hoped at an early date to publish a note explaining the distinction between "public law" and "private law" in Poland.—EDITOR.

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eleventh or twelfth grade of service. The appointment of an official to the first four grades is nominated by the President of the Republic, while the remaining grades are in the hands of the actual heads of departments (ministers, etc.). In the case of officials to the Seym and Senate it is a matter for the Marshals of the Seym and Senate and, in the case of officials to the Supreme Administrative Tribunal it is for the President-in-Chief. Officials in the Civil Chancery of the President of the Republic are appointed by the President countersigned by the President of the Council of Ministers. Officers in the five lower grades may also be appointed by authorities under the direct control of the head authorities (authorities of the second instance).

The law recommends the keeping of a record of each official's service which should contain all particulars pertaining to his or her family, and the course of his or her service; furthermore, the relevant authorities are obliged to keep a list of their officials according to seniority of service; interested officials are entitled to see this list, and in case of need may put forward their objections to it. These lists may affect promotion, though authorities are entitled to promote without regard to seniority of service.¹⁰ Furthermore, the Act provides for the creation of so-called Qualifications Committees who are called upon to give their opinion as to the personal record of officials and probationers and persons desirous of gaining access to the service.

One of the most fundamental rights for permanent officials provided for in the law is that pertaining to the conditional immunity from dismissal. Article 33 provides that they may only be released or dismissed from service by a valid order of the authorities given under the present law or by a decision of the Disciplinary Commission. It must be noted that such immunity from dismissal is only conditional because an official may always be released from active service and placed on the reserve list.¹¹ Article 54 gives the authorities the right to place an official on the reserve list and in two cases (Article 56) empowers them subsequently to release him from service after the lapse of 6 months. These two cases are (*a*) if owing to changes in the organization of authorities and offices there is temporarily no corresponding post for a permanent official of that grade of service in the same department of state administration; (*b*) and in the event of circumstances arising which in the interests of the service do not permit the permanent official to continue the occupation of a post of that grade in that department of state administration; in the first case the official automatically goes on to the reserve list, while in the second case his removal from office must be sanctioned by a resolution of the Council

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of Ministers. It is quite obvious that as the law leaves it entirely to the discretion of the authorities to judge whether the special circumstances exist of which mention is made, the stipulations, especially those under (b), empower the authorities to dismiss any official. The provision of Article 33 quoted above shows in the first place that the release or dismissal of an official from the service is dependent upon the authority that appointed him, and that the orders of that authority in that respect must be supported either by a statutable decision of the Disciplinary Commission given in accordance with the general principles underlying the above-mentioned law in respect of the organization of disciplinary authorities and disciplinary procedure, or by a definite provision of the law in respect of State Civil Service. Circumstances in which the authorities have the power to release (or place on the pensions list) or dismiss an official without a disciplinary order are as follows:—

(a) Invalidity of nomination as a result of false or invalid documents, or the existence of circumstances within the scope of the regulations which cancel the appointment and which have arisen since the nomination—in these cases the official is dismissed from the service.¹²

(b) Absence of an official from the service *for the period of one year* owing to an illness which does not forthwith render him incapable of service—when the authority is empowered to release him from service by application of the relevant provisions of the Pensions Act (by dismissing him or pensioning him off if the official is entitled to a pension).

(c) The non-return of an official to his duties after lapse of his term of leave without pay¹³ when the official is released from service with the consequences attendant upon an official leaving the service of his own accord.

(d) In the event of judgment being passed against a state official in the Criminal Court resulting in his inability to occupy a public post—in which event he is removed from the service without disciplinary procedure.¹⁴

(e) After the lapse of a period of 6 months on the reserve list¹⁵—in which case the authority has the right to release the official from service by application of the stipulations of the Pensions Act (by dismissing him or pensioning him off).

It must be noted that at the time the Act was passed it contained under Article 116 provisions whereby temporarily for a period of two years, and later up to April of 1929, the rights contained in Article 33, viz., conditional immunity from dismissal, were suspended in the case of officials from the IV grade downwards, but it entitled the relevant authority to use his discretion in granting those rights.

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(stabilization) to a few officials before the lapse of the above-mentioned period. In virtue of the aforesaid Article 116 an authority could, at his own discretion and without giving any reason, release from service any official from the IV grade downwards, if he had not previously been stabilized. Accordingly, in order to enjoy the full rights of Article 33 two documents of the Ministry were necessary: (a) nomination as a permanent official, and (b) a certificate of stabilization given by the relevant minister in accordance with the President of the Council of Ministers and the Minister of Finance. At the present time Article 116 of the Act is no longer in force, the Seym having refused its consent on 1st April, 1921, to a further prolongation, an official having been nominated to permanent service after the above date acquires by his papers of appointment alone all the rights stipulated in Article 33, and can only be released or dismissed from service on the conditions and in the manner set forth above.

As regards temporary officials, such an official may be released from service upon a decision of the authorities or after lapse of the period of time for which he was appointed, or within the period stated in his agreement.¹⁶

It must be remarked that this Article 62 provides that without the *consent of the official* no temporary service may last longer than 5 years. This provision, as also the spirit of the law, shows undoubtedly that the aim of legislation was to give the state civil service the character of a permanent service, while temporary service is only admitted as a provisional necessity arising from the fact that at the time the Act was passed the State machinery was not yet established, and also from the necessity of making a selection of officials. However, from the outset this aim was destined to be a failure, for instead of categorically forbidding the prolongation of temporary service after 5 years, the aforesaid article makes it dependent upon the consent of the official. It is obvious that an official threatened with dismissal is compelled to give such consent if he wishes to stay in the service.

As regards the discharge of a probationer, the authorities may dismiss him at any time if they consider him incapable of the duties laid upon him in his probationary service.¹⁷

In addition to the above methods of severing relations of service between the official and the state, the Act provides for the severing of such relations at the desire of the official.

If an official leaves the service of his own free will, he loses in accordance with Article 64 of the Act all rights accruing from his service, including the right to a pension.

It is quite relevant to say that the creation of such different kinds

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of officials as were created by the present Act up to the coming in force of Article 116—viz. (a) permanent or stabilized officials enjoying full rights under Article 33, including the right of conditional immunity from dismissal; (b) officials appointed for permanent service but not entitled to conditional immunity from dismissal; (c) temporary officials; (d) contract officials—even if justifiable at the time the Act was passed in 1922 owing to the facility of dismissing an incompetent official (b), (c) and (d), cannot now be regarded as satisfactory after seven years have passed in which a decision might have been made if the object is to create an adequate machinery corresponding to the often difficult tasks of good state administration. In order to obtain this it is necessary that the service should be based on the principle that on the one hand a good official can feel that his post is a secure one, and on the other hand, that the authorities may always have the means of dismissing an official who does not adequately fulfil his duties, *i.e.*, an incompetent official. For this purpose the application of the stipulations under Article 52, par. 2, should be limited by law to the placing of an official on the reserve list with subsequent release from service according to Article 56, and in its place a regulation should be introduced into the Act empowering the authorities to dismiss from the service such officials as have failed in two consecutive tests to show competency as is provided by the Austrian civil service regulations and as was stipulated under Section 123, Article 2, par. 3, of the above-mentioned Orders of the Council of Ministers of 8th July, 1929, in respect of officials on railways.

If one further considers that all the above enumerated classes of officials fulfil identical or similar duties, the differentiation in law between those having the same duties and responsibilities is not only unjust but aimless, for such a state of affairs must tend to cause discontent and dissatisfaction which cannot fail to have a bad influence on the officials' competency. Furthermore, such a diversity of conditions of service undoubtedly complicate the organization of the service. Accordingly, it would be desirable in future to banish from the Act the permanent official without right to conditional immunity for, as Article 116 has fallen into desuetude, this type of official no longer exists.

In particular the so-called automatic stabilization after a certain number of years of service should not be introduced as is the case in the Provisional Service Regulations of the Regency Council; this would only mean a return to the state of affairs that existed when Article 116 was in force, a state of affairs that, as was mentioned above, is neither purposeful nor just.

It would also be advisable to cancel the appointment of temporary officials. As is set forth above, although the relation of these officials to the state is regulated by public law, and in virtue of the existing law

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they bear the same disciplinary responsibility for their actions as permanent officials do, they can be dismissed from the service at any time without taking into consideration their assiduousness and without giving any reason; what is more, though their service may have been of many years' standing, they have no claim to the pension allotted to state officials, for they do not come within the present Superannuation Act. Obviously, the value of such officials under these conditions is very doubtful as far as the creation of an adequate machinery is concerned. Accordingly, at no risk to the state and administration, and even in the interests of uniform laws in respect of a uniformity of duties and responsibilities, the temporary servant should be withdrawn from the provisions of the law, all the more so as the temporary duties to which such a temporary official is often appointed can be carried out quite well by an official under contract service. The only temporary service admissible is that of an exclusively probationary character, for those candidates who have not had any preparatory service. The period of such service, as short as practicable (1 or 2 years) should be set forth *categorically* in the Act; also that after such period the official shall either be released from service or appointed a permanent servant, and that such probationary service of an official who has obtained appointment as a permanent servant shall be reckoned, as regards years of service and pension, as permanent service.

As regards other privileges to which officials are entitled, Articles 52 and 53 of the Act provide that in the event of transferring an official to another place of service, he shall not be transferred to a different department of state administration *without his consent*. If, however, he is transferred to another place of state administration, but in the same department, the authorities must see that this new post is not of a lower grade of service, and is in the same category of officials (as regards educational qualifications). It is also obvious that an official cannot be given a lower post.

Every official¹⁸ is entitled to annual leave, the duration of which depends upon the number of years of service (up to 10 years—4 weeks; 10-20 years—5 weeks; and 20 years and over—6 weeks). In addition an official may obtain leave of absence for business, family and estate reasons (2 months), or for health reasons (6 months). If an official outstays his leave¹⁹ he loses his remuneration and the period exceeded does not count to his years of service. It is also possible to obtain leave without pay for a period not exceeding 2 years unless the authorities find it advisable to prolong the period "for important public reasons." The period of such leave does not count as active service.

The Act entitles an official to permanent remuneration,

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to medical attendance and medicaments, to superannuation for himself and a pension for his widow and orphans. Their rights are not governed by the Act under discussion, but by special Acts.

Remuneration is governed by an Act of 9th October, 1923, on the Remuneration of State and Army officials.²⁰ This Act applies to all State officials, and thus includes those who do not come under the Act on State Civil Service—with the exception of magistrates and procurators who are subject to a special Act on Remuneration of 5th December, 1923.²¹ According to this Act the remuneration of officials is divided into groups and scales. There are 16 groups which correspond, as regards officials subject to the Act on State Civil Service, in respect of numbers to the respective grade of service. In every group there is an automatic rise every 3 years to scales the number of which are fixed in the Act by the letters a, b, c, etc., for each particular group; the higher the group, the smaller the number of scales. The rate of remuneration in the groups and scales is set forth a scale of points, the value of which is determined by an Order of the Council of Ministers in accordance with the economic conditions of the country at the given time. Thus the rate of remuneration in the currency of the time is obtained by a multiplication of the value of the currency unit (remuneration multiple) by the number of points allotted in the relevant groups and scales. In addition to the basic remuneration set forth in table and divided into groups and scales,²² the Act also provides for different supplements such as cost-of-living bonus (temporary) supplement for an official's family, supplements for special activities (as acting head of a department, etc.) in cases of death. Furthermore, the Act embodies a number of provisions regulating the manner of reckoning the remuneration of officials in the different kinds of service. On the whole they are very complicated and give rise to many obscurities. Altogether the present Act on Remuneration needs simplifying, and above all a stabilized rate of payment should be introduced, for the present sliding rate dependent upon economic conditions certainly does not agree with the principle of a stabilized state budget; this is, no doubt, the reason why the authorities do not carry out the principles underlying Article 5, which needs amendment in accordance with the prevailing economic conditions and upon the multiple of remuneration and the payment of remuneration according to the multiple established in 1925.

The superannuation of state officials, including magistrates and procurators, but excluding railway officials (whose superannuation is regulated since 1st September, 1929, by a separate Order of the Council of Ministers of 4th July, 1929,²³) is governed by the Superannuation Act of 11th December, 1923,²⁴ in force from 1st October,

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1923, up to the present time. This Act was amended by an Act of 13th February, 1924,²⁵ and is also applicable to the army.

The principles underlying the above Act are, generally speaking, the following: In the first place the Act is only applicable to *permanent servants*, excepting in the cases enumerated under Article 12 of which more will be said later. Normally, Article 9 provides that a State official is entitled to superannuation after at least 10 years' uninterrupted service with the proviso that he shall be entitled to such superannuation (1) after 5 years' service if he should be rendered permanently incapable of service through disablement or illness contracted through no fault of his own after taking up service; and (2) irrespective of period of service if he should be rendered permanently incapable of service for the following reasons:—

- (a) An accident consequent upon or during the fulfilment of his duties;
- (b) Warlike operations in the region of his official duties;
- (c) Infectious disease prevailing in an epidemic in the region of his official duties.

It must be noted that under the last paragraph of Article 12, in the cases enumerated under (2) *a*, *b* and *c*, probationers and temporary servants are treated as permanent servants.

The last payment received and legally due in remuneration of active service²⁶ forms the basis of the amount of superannuation.²⁷ Only those supplements to remuneration are reckoned in establishing the amount of superannuation which are taxable in accordance with Article 68 of the Act. The amount of the superannuation is fixed by Article 19 of the Act as follows. After a period of 10 years' service, or less, the superannuation amounts to 40 per cent. of the basic remuneration,²⁸ and is increased by 2.4 per cent. for each subsequent year's service, but it may never reach 100 per cent. of the remuneration. In order to be able to claim superannuation in accordance with the aforesaid stipulations the retirement of the official must come under one of the conditions enumerated in the Article (Articles 28, 29, and 30 of the Act), namely, permanent incapability of service, attainment of 60 years of age, acquisition of the right to full superannuation having completed 55 years of age, and on the termination of service owing to an illness lasting longer than the period prescribed under the regulations; if an official has not been appointed to active service within 6 months after having been placed on the reserve list, and also if an official has been discharged by an order of the Disciplinary Commission.

Retirement is effected at the request of the official or of the authorities in the case of permanent incompetency for service consequent upon bodily infirmity or upon decline of physical strength

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or mental ability; but in the case of an official having exceeded 60 years of age, only at his own request unless he has at the same time acquired his claim to a full pension, when the authorities may ask him to retire; if an official has reached the age of 55 and has acquired the claim to a full pension, he retires at his own request only. In the other cases enumerated above the authorities place an official on the superannuation list.

It follows from the above that an official leaving the service of his own accord, without such conditions entitling him to retire at his own request, loses his claim to superannuation even though he may have done the years of service stipulated under Article 9.

A state official having no claim to superannuation under Article 9 of the Act, who leaves the service owing to incapacity consequent upon an illness or disablement contracted without any fault on his part or owing to a change in the organization of administration, is entitled to a compensation equivalent to three months' salary at the rate of his last remuneration in active service.

In accordance with Article 21 an official upon retirement is entitled to the costs of transfer of himself and his family from the place of his residence to his new place of residence on condition that such transfer shall be taken within one year from the date of retirement.

The years of service normally entitling an official to superannuation are reckoned from the date of taking up service. To these years are included (a) the period spent on the reserve list; (b) the period spent in active military service; (c) the period spent as prisoner of war if such imprisonment is through no fault of the official; furthermore, the period spent in compulsory military service counts towards superannuation, and also a minimum period, not exceeding 4 years, spent in higher studies at one of the University Colleges or equivalent scientific institute, but only if the official completes his studies with the prescribed examination. The period of compulsory military service and of higher studies only affects the rate of superannuation and does not give claim to superannuation or, in other words, does not reckon as the 5 or 10 years' service prescribed in the above-mentioned Article 9 of the Act. The period of service of a temporary servant or probationer contributes towards superannuation if his appointment to permanent service follows directly upon his temporary or probationary service. Whether the period spent in service under contract contributes towards superannuation depends upon the ruling of the relevant authority-in-chief with the sanction of the Minister of Finance. It is also dependent upon the ruling of the relevant authorities with the sanction of the Minister of Finance whether years of service spent before an interruption of service

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contribute towards superannuation. In addition, some officials are liable to a privileged method of reckoning years of service, namely, officials of travelling post offices (in railway vans) reckon every year after ten years spent in such service as 14 months as regards rights to superannuation.

Furthermore, as regards the transference of a number of officials from service under the former Partitioning Powers, the law provides that for the time being such service shall be reckoned, as far as superannuation is concerned, as service in the Polish State. In addition, the Act admits for the same purpose the years spent in professional callings and municipal service under the Partitioning Powers. The Act further provides for a reduction of 25 per cent. in the superannuation of pensioners and officials of the former Partitioning Powers.

As regards widows' and orphans' pensions, the Act provides that this shall depend upon the claims of the father or husband. The rate of a widow's pension shall be equivalent to 50 per cent. of the superannuation of the deceased husband, or of the rate to which he was entitled at the time of his death.

The pension of an orphan is as follows: (a) one-quarter of the widow's pension for each child if the widow is living and was entitled to a pension at the time of the father's death; (b) one-half the widow's pension for each child if the widow is no longer living, or if at the time of the husband's death, she had no claim to the widow's pension, or lost it later; (c) two-thirds of the widow's claim for each orphan without father or mother. The Act further prescribes that the joint amount of the orphan's pension, irrespective of the number of children, shall not alone, or together with the widow's pension, exceed the superannuation of the deceased official, or respectively the rate to which he was entitled at the time of his death. An official's orphan is entitled to a pension up to the completion of 18 years of age unless he or she marries before reaching that age. However, if an unmarried orphan continues her studies in a scientific institute, she may draw her pension until she has completed her studies though she may be over 18 years of age, but with the age limit of 24. Furthermore, it is left to the free discretion of the higher authorities in conjunction with the Minister of Finance to give an orphan's pension in exceptional cases after the attainment of 24 years of age. Only those widows are liable to a pension who lived with the deceased husband in a married state up to the time of his retirement. Children of a marriage contracted before receiving a pension are not liable to the orphan's pension.

In the event of a widow contracting another marriage, she may at her request be paid a lump sum,²⁹ or she may retain her right to a widow's pension in case of a second widowhood.

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The widow of an official who has died while in active service before acquiring the right to superannuation is entitled to a compensation amounting to one-half the remuneration serving as a basis for the superannuation of the deceased. The same compensation is granted to fatherless and motherless orphans with the above-mentioned restrictions as to age limit. Furthermore, in the event of the death of a superannuated official, the widow, or orphans, are entitled to so-called after-death compensation equivalent to the last three months' remuneration received by the deceased. In addition to the above, the Act embodies a number of detailed regulations with regard to the cessation of pension, loss of the right to pension and superannuation, etc., but there is no real purpose served in going into all these points when all that is required is a general understanding of the principles on which the Act is based. It must, however, be mentioned that in view of the Order of the President published in 1927 on the protection of intellectual workers,³⁰ besides the omissions and misunderstandings that its application brings to light, the Act needs to be brought into conformity with this Order, especially as regards the transference of rights acquired when leaving state service for private service and *vice versa*. In fact the difficulty that arises is that in the case of state officials, the superannuation is not based on the principle of self-support as is the case with intellectual workers, since the amounts paid by state officials in accordance with Article 7 of the Act are not subscriptions towards superannuation, but payment for services rendered which the State Treasury expends from funds set aside for that purpose in the budget. This matter cannot be left without some sort of regulation otherwise without any justifiable reason, the state official will find himself in a worse position than intellectual workers who, when leaving one service (private) for another, do not lose their rights to a pension; they retain them and even transfer them from one insurance company to another as is set forth in the above-mentioned Order.

In the event of any of the privileges accruing to a state official under the Act on State Civil Service and the Acts on remuneration and superannuation being refused either in part or in their entirety by the relevant authorities, an official may put forward his claim to the Supreme Administrative Tribunal by way of a complaint against the decision of the last administrative instance, unless it is explicitly laid down that such privileges are at the discretion of the authorities; however, the complaint must be lodged not later than two months after receipt of the decision. In all such matters the last administrative instance is the relative authority-in-chief (Ministry). Even in matters left to the discretion of the relevant authorities a complaint may be lodged before the Supreme Administrative Tribunal if the official concerned considers that the decision has been *ultra vires*.

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The duties which are imposed on a State official by the Act on State Civil Service are set forth in a number of stipulations, Articles 21-32, inclusive. According to these provisions the duties of an official include: loyalty to the state service, strict adherence to laws and orders, assiduity in service, regard for the public interests, observance of discipline, proper deportment whether in the office or outside; furthermore, a Civil Servant shall not disclose service secrets; he shall not accept any gifts or other advantages, he shall observe office hours, give explanation for absence from office; he shall not accept any outside appointment without permission of the authorities, he shall not own any business, shall give notification of his domicile, etc., etc. In particular an official is obliged to carry out all instructions of his superior officer unless they are explicitly contrary to the provisions of the Act; in the latter case the official is in duty bound to make known his observations thereon to his superior officer; if they prove unfounded he must carry out the instructions. As regards service secrecy, an official is in duty bound to keep absolutely secret all matters considered confidential or when the public interests, or any other service considerations demand it; an official may not enter into any union or combination which might disturb the proper course of state administration, or the normal course of official duties; he may not comment in the press on any subject connected or concerned with his official duties; he may neither demand nor accept gifts offered him in connection with his official duties, either directly or indirectly (through his family); an official from the eighth grade upwards being an acting administration or Treasury officer, may not own within the territorial jurisdiction of his authority agricultural, industrial, or commercial undertakings, etc.

If an official fails to observe any of these requirements, he may be brought before the responsible authorities which may either be the Corrective or the Disciplinary Court. An official is brought before the Court of Correction if he fails in his duties and before the Disciplinary Court if he commits anything in the nature of an offence. The Act defines as an offence any infringement of duties which might involve injury to public interests or endanger the public safety; failure in duty is infringement not bearing the character of any of the above-mentioned offences against service. Continual and repeated failure in duty to the service is considered an offence. Disciplinary or corrective penalties do not preclude the responsibility of the official before the criminal or civil courts. Disciplinary or corrective procedure is carried out independently of court procedure in the same case, and may in its final results differ from the court verdict; nevertheless, if an official is convicted by a criminal court of an offence involving loss of competency to hold a public office, the authorities are compelled to

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discharge him from the service without disciplinary procedure. Corrective penalties are as follows: (1) reprimand; (2) shortening or loss of leave of absence. Such penalties are imposed by the direct authorities or the higher superiors; they may also be imposed by the Disciplinary Commission. Corrective penalties are not inscribed in the Service records. If a corrective penalty is imposed by an authority of the second instance, the official has the right to lodge an appeal against the decision before the authority-in-chief within eight days. Disciplinary penalties are as follows: (1) censure; (2) the cancellation of from one to three years of service; (3) degradation by one or two grades with the suspension of promotion for one to three years; (4) retirement with decreased superannuation or compensation up to 50 per cent.; and (5) discharge from the service. Disciplinary penalties may only be imposed by the Disciplinary Commission on the basis of disciplinary procedure carried out in conformity with the provisions of the Disciplinary Procedure Act. Officials on the reserve or the retired list may also be brought before the disciplinary court. Dismissal from the services carries with it the loss of all rights connected with the holding of office including the right to superannuation; a verdict may, however, stipulate that the members of the family (widow and orphans) of the discharged official be given a permanent grant not exceeding the normal widow's and orphan's pension. A prosecution in respect of failure in duty or an offence against the service does not fall into desuetude.

The composition of the disciplinary authorities and disciplinary procedure in accordance with the Act of 17th February, 1922,³¹ are as follows:—

The following are competent to sit in judgment on disciplinary matters:—

(1) Disciplinary Commissions acting with authorities directly subject to the authority-in-chief (authorities of the second instance); these commissions judge *in the first instance* disciplinary cases of all officials from the third to the seventh grade of service inclusive, as also lower officials employed by authorities of the second instance and by authorities subject to them.

(2) Supreme Disciplinary Commissions parallel to the chief authorities (Ministries); such commissions sit in judgment, (a) *as of the first instance* on disciplinary cases of officials and lower functionaries forming part of the staff of the higher authorities, and also of officials of authorities of the same department of state administration from the sixth grade upwards; (b) *as of the second and final instance* on appeals against decisions of the disciplinary commissions imposing corrective and disciplinary penalties, censure, or striking off of years of service.

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(3) The Supreme Disciplinary Commission established at the meeting of the Council of Ministers; this Commission passes judgment on appeals against the decisions of the disciplinary commissions imposing disciplinary penalties, degradation, resignation with decreased superannuation, or dismissal from the service, and it also passes judgment on appeals from judgments of the Higher Disciplinary Commission sitting in the first instance.

Each of the Commissions is composed of a President, his deputies and the necessary number of members appointed for three years. The President of the Supreme Disciplinary Commission as also his deputies and the members are appointed by the President of the Council of Ministers upon a resolution of the chief authorities, from among the sub-officers of all these authorities; in the case of Disciplinary Commissions and Higher Disciplinary Commissions, however, these persons are appointed by the relevant authorities-in-chief from amongst the officers of the authorities who have set up the given Commission. In the execution of their functions the members of the commission are self-dependent and independent. A Disciplinary Commission composed of the President and two members may sit in judgment, but the President must have knowledge of the law. Furthermore, to form a quorum the Commission must have amongst its members at least one official of the same category and class of service as the accused; in addition, in the case of officials attached to the Ministry of Finance there must be a magistrate and four officials: in the case of the Ministry of War military officers must be among the members of the Commission.

In order to safeguard and promote efficiency of service before questions are relegated to the Disciplinary Commissions which dealt with infringement of service duties, the Act provides for disciplinary counsel (procurators) appointed by the authority where the Commission is established from amongst its officers. An official brought up before a Disciplinary Commission has the right to choose an advocate, but he must be a state official; he may also be represented in the office by an official appointed by the chief of the department where the Disciplinary Commission is sitting from amongst the sub-officers.

Furthermore, the Act provides for a so-called Court of Inquiry appointed by the relevant authority from amongst his sub-officers at the request of the Disciplinary Commission after it has passed a decision that an inquiry shall be made. The duty of such a Court is to conduct full inquiry into the case, investigate the relevant documents, take the evidence of witnesses, experts, etc.

Disciplinary procedure, which must be conducted in the strictest

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secrecy, begins with an investigation by the Disciplinary Commission of the denunciation made by the authority, who is in duty bound to make the preliminary inquiry beforehand. After hearing the denunciation and deliberating with the Disciplinary Counsel (but without participation of either of the parties) the Disciplinary Commission decides whether the case requires a Court of Inquiry; if the Commission finds that in the given case it is only a matter of neglect of service, it may impose a corrective penalty; it may also, without calling a Court of Inquiry, commit the case directly to the Disciplinary Court. If the infringement bears the character of a penal offence according to universal penal laws, the authority or Disciplinary Commission is in duty bound to make a charge before the legal authorities, in which case disciplinary procedure is not continued; it is only suspended for the decision of the Judicial Court. Criminal Courts are also bound to notify the authority of the accused of the court proceedings, and he in his turn notifies the relevant Disciplinary Commissions.

A resolution of the Disciplinary Commission referring the case to a law court or a resolution terminating disciplinary procedure must be served on the accused, and also on the Disciplinary Counsel through the Service channels. A resolution referring a case to a law court is not subject to appeal, whereas an appeal may be made to the Court of Appeal by the Disciplinary Counsel against a decision of dismissal or corrective penalty. The Disciplinary Counsel, the accused, the advocate and any witnesses and experts are summoned to the Disciplinary Court. The disciplinary proceedings are not public, only those persons being admitted who have been summoned thereto. It is conducted in the same manner as in penal cases. The taking of evidence is followed by cross-examination of the parties, after which the Disciplinary Commission passes sentence, which must be based on the facts and circumstances revealed during the proceedings and on the complete conviction of the judge. The Commission either acquits the accused of violation of his duties or it finds him guilty; in the latter case it imposes either a disciplinary or a corrective penalty. The deliberations and ballot of the jury are secret. The decision signed by the President and all the members is made known to both parties immediately after the deliberations and ballot. A copy of the decision (with findings) must be drawn up within eight days and handed to the Disciplinary Counsel and also to the accused. A protocol is made of the proceedings. The parties may appeal to the Higher, respectively Supreme Disciplinary Commission, against the sentence of the Disciplinary Commission of the first instance within 15 days after a copy of the sentence has been served. An appeal suspends the execution of a sentence. In the case of a corrective penalty only the Disciplinary Counsel may appeal.

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In the event of the death of the accused, the disciplinary proceedings are stopped, but they may be continued at the desire of the lawful heirs of the accused.

If a decision of the Disciplinary Commission of the first instance is not appealed against within the prescribed period of fifteen days, it becomes good in law, but a decision of a Disciplinary Commission of the second instance is irrevocable after its publication. A legal decision is executed by the relevant superior authorities; disciplinary penalties are inscribed in the Service records. A case may be brought up for re-trial at the request of the accused or his lawful heirs if such persons are in possession of fresh evidence or proofs not revealed at the previous trial which of themselves, or in conjunction with the facts previously established, or the evidence previously given, may lead to exoneration from blame, or the imposing of a corrective penalty, or instead of dismissal, the imposing of a lighter penalty. Permission for a re-trial is given by the Disciplinary Commission that tried the case in the first instance. An appeal against such a decision of the Disciplinary Commission of the first instance may be made before a Disciplinary Commission of the second instance within 15 days.

If a state official is threatened with proceedings in the law, or disciplinary court, the Disciplinary Commission may release him from service at any time if the character and gravity of the charge indicate the removal of the accused from public service.

The superior officer has the duty, respectively the right, temporarily to suspend an official from his duties in the following cases:—

- (a) If an official is under arrest by the Criminal Court;
- (b) If an official openly refuses obedience in particularly important circumstances;
- (c) If owing to the gravity of a charge against him his presence in the service would endanger the prestige or safety of the Service.

In analogous cases an official who has been subjected to inspection in the office is entitled to demand temporary suspension from service; such a demand may be quashed by the superior officer demanding the inspection. Every case of suspension must be notified by the relevant authority to the relevant Disciplinary Commission within 8 days, and within a further 8 days the Commission will give its irrevocable decision in confirmation or annulment of such suspension.

If a Commission demands or confirms suspension of an official, it may at the same time reduce his remuneration by not more than one-half for the period of suspension. The suspension of an official

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terminates at the latest with the final conclusion of disciplinary proceedings, but if they think fit, the Disciplinary Commission may annul the aforesaid suspension sooner. The Disciplinary Commission demands, confirms, and annuls suspension. On this point a party may appeal before a Commission of the second instance against a decision of a Commission of the first instance within 15 days after receiving a copy of the decision. An appeal does not arrest the execution of a decision. Temporary suspension from service (by the authorities) does not require a formulated charge. If an official is sentenced to a disciplinary penalty, the period of his suspension from service does not count to his years of service or towards the right to a pension. Where an official has been dismissed in order to serve a sentence passed on him in the criminal court, he has no claim to his remuneration for the time of his suspension. On the other hand, if disciplinary proceedings are quashed, and the state official is exonerated from blame, or given a corrective penalty, the period of suspension is restored to his years of service, and his arrears of remuneration for the period of suspension are paid.

In conclusion it must be remarked that a final disciplinary sentence passed in virtue of the present Act cannot be preferred to the Supreme Administrative Tribunal, for in accordance with Article 3, par. (f), of the Act on the Supreme Administrative Tribunal,³² it is explicitly excluded from the competency of the Tribunal. On the other hand, sentences passed by authorities in execution of disciplinary sentences may be referred to the Tribunal.

All the laws and orders enumerated above have application in the case of lower officials, and, as regards the Act on Civil Service with its amendments and modifications with regard to the nature of the employment such officials hold.

It must further be remarked that though the aforesaid acts show many omissions and shortcomings, which however can easily be overcome by the good will of the competent authorities, nevertheless taken as a whole the Service conditions of state officials must undoubtedly lead to the full understanding of the rights and duties of a Polish official and the creation in this way of an adequate State administrative machinery.

¹ Mandate of the Regency Council published in the Journal of Laws No. 6, p. 13.

² Both these Acts were published in the *Dziennik Ustaw* (Journal of Laws), 1922, No. 21, pars. 164 and 165; the former came into force on April 1, 1922, and the latter on July 1, 1922, and, with a few amendments, are still in force.

³ Article 118 of the first and 71 of the second.

⁴ *Dziennik Ustaw* (Journal of Laws) No. 12, par. 93.

⁵ *Dziennik Ustaw* No. 47, par. 462.

⁶ *Dziennik Ustaw* No. 57, par. 447.

⁷ *Dziennik Ustaw* No. 28, par. 257.

⁸ *Dziennik Ustaw* No. 37, par. 349.

⁹ *Dziennik Ustaw* No. 29, par. 272.

¹⁰ Article 40 of the Act.

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¹¹ Articles 54, 55, and 56 of the present law.

¹² Article 65 of the Act.

¹³ Article 38 of the Act.

¹⁴ Article 71.

¹⁵ Article 56 of the Act.

¹⁶ Article 62.

¹⁷ Article 63.

¹⁸ Article 37.

¹⁹ Article 38.

²⁰ Published in Dziennik Ustaw No. 116, par. 924.

²¹ Dziennik Ustaw No. 134, par. 1107.

²² Article 3.

²³ Dziennik Ustaw No. 57, par. 448.

²⁴ Published in the Dziennik Ustaw 1924, No. 46.

²⁵ Dziennik Ustaw No. 18, par. 178.

²⁶ In accordance with the scale of payment, Article 3 of the Act on the Remuneration of State and Army Officials, and Article 4, Sections 1 and 3, of the Act on the Remuneration of Magistrates and Procurators.

²⁷ Article 17.

²⁸ Articles 17 and 18.

²⁹ Up to 45 years of age equivalent to 2 years' widow's pension, or above that age 1 year's.

³⁰ Dziennik Ustaw 106, par. 911.

³¹ Dziennik Ustaw p. 165.

³² Dziennik Ustaw No. 68, 1926, par. 400.

The Reformed Parliament and Civil Registration of Births and Deaths

By MABEL C. BUER, D.Sc.(Econ.)

BEFORE 1837 there was properly speaking no official registration of births and deaths in England, there was only registration of baptism according to the rites of the Church of England and of burials in churchyards.¹ After 1754 the registration of marriage was on a somewhat different footing owing to the drastic Marriage Act popularly known by the name of its sponsor, Lord Hardwicke. Its correct title, "An Act for the better preventing Clandestine Marriages," sufficiently indicates its object, which was to stop the scandal of the Fleet and similar marriages, and incidentally to systematise and regularise the general law of marriage. The Act laid down that marriages should only be celebrated in parish churches or public chapels of the Established Church, according to the rites of that church and by a minister of that church. It provided that marriage could only be celebrated after the publication of banns, except in the case of special licence by the Archbishop. It enacted that in every church there should be a marriage register book, in which a record of every marriage should be entered and signed by the contracting parties and by at least two witnesses. A false entry in or mutilation of this book was punishable with death. Any person performing a marriage ceremony, except according to the law, was punishable with transportation, and the marriage so celebrated was null and void. Professing Jews and Quakers were exempt from the provisions of this Act, provided that both contracting parties were members of the sect. The effect of this exemption was that such marriages were acknowledged in law as civil marriages by declaration

¹ Thomas Cromwell, in 1538, directed that the parson in each parish should keep a record of Weddings, Christenings and Burials. From this dates the keeping of these records upon national lines, though individual parishes have records dating from before this year. Under Cromwell's decree the parson was liable to a fine of 3s. 4d. if he neglected this duty. In 1563 there was, however, already discontent with the way the registers were kept and Parliament attempted to pass a Bill to regulate the matter, but owing to the opposition of the clergy it was dropped. In 1590 Burleigh made an attempt at regulation, but the Archbishop of Canterbury appears to have intervened but himself issued a precept enjoining the proper keeping of registers. During the Commonwealth civil registration of births (not baptisms), marriages and burials was in force. Opinions differ as to its success; it probably varied in different parts of the country. The old ecclesiastical system was restored at the Restoration.

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before witnesses; but as, in practice, both bodies were extremely strict in their regulations and kept careful registers, no difficulty seems to have arisen from the peculiar legal position. Roman Catholics and all Protestant Dissenters, other than Quakers, were compelled to be married in the Established Church. The marriage register thus became a correct record of the marriages of the country. It may be presumed that the entry in the book was made in the case of all marriages; "signing the register" being a recognised part of the marriage ceremony. No doubt some books were destroyed by fire or otherwise lost; but the marriage register after 1754 is generally accepted as giving a substantially correct account of the number of marriages. The burial and baptismal registers were much less carefully kept. For one thing the marriage register was necessarily produced every time a marriage was performed; but in many parishes the other registers were left in the care of the clerk, who was often ignorant and careless. Again, entries in the marriage register had to be made at the time of the ceremony, because of the signature of the parties and the witnesses, but burial and baptismal records were often made up at infrequent intervals from rough notes or even from memory. The carelessness with which many records were made, and the still greater carelessness in their custody, was notorious. The records were supposed to be kept in the church in an iron box, but were often kept at the vicarage or the clerk's house. A case is cited of the leaves of the register book being used by the clerk, who was a tailor, as measuring paper; another where they were used by the clerk's daughters, who were lace makers, as pattern papers, and even of some thrifty soul who made a bed tester out of an old register book.

Before the end of the eighteenth century the greater part of the burials in the country must have been in the parish churchyard, as generally there was no other place available. Again the Jews and the Quakers were exceptions, they each had their own burial grounds. The case of other Dissenters was anomalous in this, as in so many other matters. The freehold of the churchyard was vested in the church, and was under the control of the parson. He had the right to refuse Christian burial to any unbaptised person; but, on the other hand, every parishoner had the right of burial in the parish churchyard. The disputes that sometimes arose were a factor in the establishment of various Nonconformist burial grounds at the end of the eighteenth and the beginning of the nineteenth centuries, and also of several profit-making ventures in the latter period. Another factor being the over-crowded state of the churchyards in the large towns. The church burial records, therefore, did not record the number of deaths with anything like complete accuracy, but other

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sources of information enabled the deficiency to be calculated with what was probably a fair degree of accuracy.

But if marriage in all but a very trifling number of cases meant marriage in the Established Church, and if death meant burial in the churchyard, being born by no means implied that baptism followed. Apart from the numerous sects which rejected Church baptism many nominal members of the Church of England were very careless in the matter. There also seems reason to believe that the baptismal register was less carefully kept than the others.

To modern students the chief interest of all this is from the point of view of historical vital statistics. The inadequacy of the parish registers, coupled with the absence of a census, has left room for much fascinating calculation sometimes hazardously near guesswork. It is a game that has been played now for over a century, with considerable interest to the players. But, though the interests of vital statistics were not totally ignored in the early nineteenth century, the impetus for reform came from quite other directions.

Firstly, from the legal point of view. The proving of a birth or death after a lapse of time was often a tedious matter. Apart from the unsatisfactory nature of the records, the fact that they were entirely decentralised often meant a search over a wide area of country. If a baptismal record was found it did not prove the date of birth, since baptism was often considerably delayed. Sometimes the date of birth was added in the register, but that evidence was not always accepted, as it had been held that the clergyman could only know the date of birth by hearsay. Nor was the baptismal register always taken as proof of birth in the parish. Parishes normally accepted it as proof of settlement; but the courts had decided that it was only presumptive evidence. Finally, the courts had sometimes refused to accept entries in parish registers as proof where it was known that the records were made after a lapse of time from rough notes. Wilful tampering with records, made possible by their careless custody, was by no means unknown. In 1812, in an Act known as Sir George Rose's Act, an attempt was made to obtain better registration and better preservation of the entries. The Act appears to have been badly drafted originally, and was so much altered in its passage through Parliament that it came out at the end almost meaningless. It refers to births but makes no provision for their registration; it also set up a system by which copies of parish registers were to be sent to a Diocesan Registrar, but no provision was made for paying this Registrar to deal with the copies so received. In the original Bill numerous fines were imposed for failures to keep the register properly, and these fines were to be divided between the informer and certain parochial charities. The penalty of transportation was

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also imposed for wilful tampering with the records; this remained in the final Act, but the other penalties were deleted in passage through Parliament. The clause allocating the fines was not deleted, and so the Act solemnly declared that the penalty of transportation should be divided between the informer and charity. This was the subject of much sarcastic remark by critics of the Act, which, as a legal enactment, was almost abortive. The one tangible result was the issue of proper books by the King's printer, with proper serial numbered spacing. This was a natural check on carelessness. There is evidence that the discussion of the Act and the new books roused some of the clergy to a sense of their duty in respect of the registers and, in particular, many of them took over the keeping of the registers and their custody from the clerk. In large town parishes the work was often done by the curate.

But criticism was also growing from another point of view. The ecclesiastical nature of the registers imposed serious hardship upon Dissenters, and coupled with the demand for a change in the Marriage Act, came one for the civil registration of births and deaths. The parish registers ranked as public documents, and certified copies of them were held to be proof in the courts. The private registers of births and deaths kept by the Jews and Quakers, though not strictly of the same standing, seem to have been generally accepted as conclusive evidence. But it had been held that the registers of burial companies were not evidence, and many sects, having no rite analogous to infant baptism, had no record of births. This proved extremely inconvenient in transfers of property. As early as 1741 a body of Dissenters in London known as "the deputies of the three denominations" which was elected to look after the civil interests of the Presbyterians, the Independents and the Baptists, made arrangements for the opening of a voluntary register for these sects. The librarian of Dr. William's Library acted as Registrar, he issued forms which were signed by the parents and witnesses, and copies of the certificates were filed at the Library.¹ For a long time it was believed that this voluntary register would rank with the parish registers, and it was apparently generally accepted as proof of birth in connection with property transfer and inheritance. Propertied Dissenters were therefore not actively discontented with the law. But in 1826 a certificate was rejected as evidence in the courts. The denominations sought the opinion of the Chief Justice of the Common

¹ Note. The Wesleyan Methodists established a voluntary register of baptisms upon the same model in 1818. The registrations amounted to something over 400 a year, said to be a small number relative to membership. But, of course, it would only have been to the better-to-do that such a register would appeal. Further, the Wesleyans often had their children baptised in the Established Church; they had no strong doctrinal objection to this and the worldly advantages of church baptism were considerable.

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Pleas, who pronounced that the certificates and the registers were not public documents and could not rank as such. They could, however, be admitted as evidence in the same way as other private documents, for instance, as an entry in the Family Bible; indeed, they should be entitled to more weight owing to their more public and solemn character. This decision naturally caused considerable discontent with the legal position, and as soon as the Reformed Parliament met, petitions on the subject were presented to it. These were referred to the Select Committee on Parochial Registration, which was appointed in 1833.

The committee inquired into the then state of the law, and also examined existing continental systems, a statement as to these having been prepared for its use. The Committee bluntly declared the British system to be the worst in Europe. This view may have been correct, but it is doubtful if some of the continental systems were quite as effective as was claimed. This country was not peculiar in having an ecclesiastical system, that had been general until the French Revolution, and many countries still possessed a purely ecclesiastical registration in 1833. In predominately Catholic countries there were not, of course, the problems which were introduced by the number of Dissenters in England, and the stress laid upon the rite of baptism by the Catholic Church also meant that baptismal registers corresponded more closely with births than they did in this country. Nevertheless, it was generally held that, outside Sweden, no country had satisfactory registers in the eighteenth century, and it seems difficult to believe that the old systems had been so improved. The Committee, however, were right in admiring the excellent system set up under the Napoleonic Code; which system had not only survived the Restoration in France but also remained, with but slight modifications, in Prussia, the Rhenish Provinces, Belgium and Geneva. The Committee pronounced strongly in favour of a uniform system of civil registration. Political events prevented the recommendations being immediately acted upon, but the reform could not be long delayed. We are apt to forget that the Reform Act was not only a victory for the middle classes against the aristocracy, of the new manufacturers against the landed interest, but also of the Dissenters against the privileges of the Church. Universal civil registration was supported by statisticians, by medical associations, by legal reformers and others, but the real driving force came from the grievances of Catholics and Dissenters. In the same way some opposition came from sheer dislike of any change, Lord Ellenborough, for instance, saying that registration of births was required to "gratify the statistical fancies of some few philosophers." But the only effective opposition came from the Church.

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This opposition was on the grounds that, firstly, it was irreligious to suggest that a child's name should be registered before the child was baptised. This was met in the Amending and Explanatory Act passed in June, 1837, which provided that the birth could be registered without giving a name, and that the name could be added after an interval. The second ground of opposition was that civil registration would lead to fewer baptisms among the nominal adherents of the Church. In particular, it was stated that many of the poor looked upon baptism as mainly a ceremony for naming the child, and that civil registration would appear to them to be a substitute. When this argument was brought forward in the Commons, Lord John Russell replied, "Sir, that is an objection founded on the ignorance of the lower orders . . . if that ignorance does exist . . . I say the cure for that is to give the people knowledge. I say it is the fault of Parliament which has left the people in ignorance. I do not think that we should frame our laws for that ignorance."

But the opposition of the Church was not purely doctrinal, though that aspect was naturally stressed in argument. It had an important vested interest in the old system. Apart from the fees charged for marriages and burials there were fees more directly due to registration. It was stressed that the rite of baptism was performed without charge, but a fee was payable for the entry in the register and for the certificate. The fees payable at baptism appear to have been generally 1s. or 1s. 6d. In some country parishes there were no fees, in other places they were remitted to the poor. An income was also derived from fees for searches in the registers. Sometimes the fees went to the clergy, sometimes to the clerk (often forming the main part of his remuneration), sometimes they were divided. In many of the new urban parishes they were the main source of income of the curate. In St. Pancras, for instance, the average revenue from the registers was £210, and formed the curate's stipend. The opponents of the Church were sarcastic about this aspect of the matter, but it must have been a serious one to many a over-burdened town parish, faced with heart-breaking responsibilities and woefully inadequate finances. The Church spokesmen admitted the grievances of the Nonconformists, and suggested that these should be met by allowing them to keep their own registers, upon the model of those kept by the Jews and Quakers, and these registers should be given the same status as those of the Church. Further, that copies of all registers should be sent periodically to some central office. Not all the clergy were in favour of this, as they disliked the idea of the work involved in large parishes. It was, of course, obvious that the system would have proved very unsatisfactory from the legal and

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statistical point of view. Had the reform of the registers, however, been taken in hand a few years earlier, it is probable that some such solution would have been reached from the simple reason that there would have been no body of civil officials competent to do the work. Indeed, an abortive Bill brought forward in 1832, had proposed the registering of all births by the Parish Clerks, and that copies of the entries should be sent to the Clerk of the Peace, and by him to the Registrar of the Court of Chancery. A Bill introduced in 1834 proposed that the collectors and assessors of taxes should be the registrars and the Surveyors of Taxes should be the Superintendent Registrars. It must be remembered that the promoters of the reform had in view mainly the interests of those who desired civil registration for reasons connected with the holding of property. But at this time the New Poor Law system was in process of formation, with Chadwick as its zealous organiser. Chadwick looked at the subject from a very different point of view. As early as 1828 he had published an article on Life Assurance in the *Westminster Review*, in the course of which he had projected the idea of a complete register of deaths and the cause of death. The atmosphere of religious controversy in which the reform was discussed was extremely distasteful to Chadwick. He wrote in 1836, "the Bill for the Registration of Marriages, Births and Deaths now pending appears to us to have been 'called for' in a narrow, sectarian spirit, and to be opposed by several persons in a spirit even more narrow and bigoted." He goes on to state what appeared to him to be the proper reasons for the reform; namely, those connected with the legal, social and public health aspects of registration. Chadwick saw in the personnel of the new Poor Law a body of persons who would be eminently rendered fit by their main duties to obtain the information required as to the vital statistics of the mass of the people. He wished the Poor Law Officials to be *ex officio* registration officers, and the Poor Law doctors to be responsible for making returns as to cause of death. His proposal does not appear to have been made public at the time, which is a pity, the comments would have been so amusing to read.

The machinery which was finally set up by the Act¹ which was passed in 1836 and came into force in July, 1837, was as follows:—

A General Registry Office was set up in London under a Registrar-General, assisted by the necessary officers and clerks. The salaries and other expenses of this office were made chargeable upon the Consolidated Fund. The Registrar-General was empowered to lay down the qualifications of the local registrars and superintendent registrars who were to be appointed by the Boards of Guardians. As

¹ Note. It was introduced by Lord John Russell in the Commons and Lord Melbourne in the Lords.

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a matter of fact the only qualifications laid down were certain provisions to ensure respectability and honesty and to avoid clashing duty. It had been definitely stated in the passage of the Bill through Parliament that it was expected that the Guardians would appoint their own officers, and that the office of Superintendent Registrar would normally be filled by the Clerk to the Guardians. It was stated in the First Report of the Registrar-General (1839) that more than half of the registrars actually were poor law officials, and that of the 562 permanent Superintendent Registrars by then appointed, 500 were Clerks to the Guardians. (As provided in the Act special interim arrangements had been made in the districts where Boards of Guardians had not yet been set up.) The office of Superintendent Registrar was held at the pleasure of the Registrar-General. The local register office had to be provided by the Guardians and approved by the Registrar-General. The latter supplied the necessary books and forms to ensure uniformity. The registration of births and deaths was made free to the public, but the registrars were paid by the Guardians at the rate of 2s. 6d. for the first twenty entries and 1s. for every subsequent one. Four times a year a copy of all the entries was to be sent to the Superintendent Registrar, and those responsible for the marriage registers were to do the same for marriages. The Superintendent Registrar was to send copies in his turn to the Registrar-General, being paid 2d. per entry. The fees to the registrars and superintendents were to be met from the Poor Rate. At the General Registry the returns were filed alphabetically for the purposes of legal search, and were also analysed for the purposes of the annual report which the Registrar-General was obliged to lay before Parliament.

The effectiveness of the Act differed somewhat in respect of the three subjects of registration. As already stated marriages had been effectively registered under the old system, though the lack of centralised returns and of really safe custody of the registers had been a defect. The grievances of Nonconformists and others in respect of the marriage ceremony had been met by a Marriage Act which was passed concurrently with the Registration Act. This left the Church ceremony unaffected, except that the duty was imposed on the incumbent of sending quarterly copies of the marriage register to the Superintendent Registrar. Nonconformist places of worship could be licensed for marriages, but the presence of a civil registrar¹ at the ceremony was necessary. In fact a civil ceremony was incorporated with the religious one. A purely civil ceremony was also set up. In all marriages other than of the Established Church the registrar was responsible for registration, and the same rules as to the signatures of the parties and of witnesses applied as in the church.

¹ Note. The office of Registrar of Marriages was separate from that of Registrar of Births and Deaths, though the two offices could be held by the same person.

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Effective registration was secured, as under the old system, with the additional advantage of centralized returns and safe custody.

The registration of births was less satisfactory. The Act bore the marks of the strong opposition which civil registration of births had aroused. It laid down that the father or mother of the child, or failing them through inability, the occupier of the house, *may* give notice of the birth within 42 days (the original Bill read *shall* give notice within 8 days. The amendment was made in the Lords), and *shall* give information upon being requested to do so. After the expiration of 42 days and within six months, registration was possible by special declaration. Though the Act stated that information *shall* be given on demand, there was no penalty for failing to do so, and no obligation to register without request. Registration of births, therefore, was not compulsory, and was not made so until the Act of 1874. Another defect was the long interval after birth during which registration could take place; this interval was doubtless extended in order to allow time for baptism to take place before registration. This long interval led to many children never being registered owing to forgetfulness on the part of the parents or to the death of the child. Religious motives lead many persons to hasten the baptism of a sickly child, but civil registration offers no advantages to a child doomed to death. Further, the Act safeguarded the status of the Church registers, so that a baptismal certificate would serve many of the purposes of a birth certificate, and some staunch churchmen doubtless refused to have their children registered. The Registrar-General's Report for 1839 speaks of "the extensive and stubborn opposition" to the registration of births, though it adds that this was being largely overcome by the diligence and intelligence of local officers. These appear to have visited houses where a birth was known to have taken place to ask for particulars; in some cases, judging from a correspondence in the *Times*, to the indignation of the parents, not to mention the parson. The Act was denounced in the *Times* as a Whig and Pagan measure, and the registrars were said to be Dissenters who advised people that baptism was no longer necessary. It is, indeed, remarkable that so large a measure of civil registration was obtained. It must have been due, as the report says, to the zeal of the officers; a zeal which was perhaps partly financial, but was partly inspired from headquarters. The opposition soon died down, the advantages of civil registration became appreciated, birth certificates became increasingly required for many purposes and registration became a habit. Non-registration, which was estimated by Farr as being an average of 5 per cent. for the whole period 1837-74, was probably mainly, though not entirely, of those who did not live six weeks.

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The registration of deaths did not arouse the same opposition as that of births. There were obvious police reasons which rendered it desirable, and it did not clash with any religious prejudices. As in the case of births, the Act simply stated that the relatives or the householder shall give information upon request. But the registrar's death certificate had to be handed to the undertaker, and the undertaker had to hand it to the minister officiating at the burial. Any person burying a dead body or performing a funeral ceremony without a certificate was required to give notice of the fact to the registrar; failure to do so rendered them liable to a fine of £10. By an indirect method, therefore, compulsory registration of death was in practice achieved, and even in 1839 the Registrar-General reported that the registration of deaths had been a signal success.

In the original Bill there had been one serious defect, due again to the fact that it was primarily a measure to deal with legal and religious disabilities and not a public health Act, that was there was no provision for recording the cause of death. Chadwick was at once aroused. According to his biographer, he approached Lord John Russell in the matter, but he could not "be got to take hold of the idea." But Lord Lyndhurst was induced to do so, and introduced an amendment in the Lords and carried it with so much success that it easily passed the Commons. As a matter of fact the notification of the cause of death was not mentioned in the body of the Act, but there is a space for it in the form of certificate in the schedule of the Act. There was no provision, however, that the information would be given upon the authority of a qualified practitioner. This situation was met by the Registrar-General seeking the co-operation of the medical profession.

The result was the following letter: "We, the undersigned President of the Royal College of Physicians, President of the Royal College of Surgeons, and Master of the Worshipful Society of Apothecaries, having authority from the several bodies whom we represent, do resolve to fulfil the intentions of the Legislature in procuring a better Registration of the Causes of Death, being convinced that such an improved registration cannot fail to lead to a more accurate statistical account of the prevalence of particular diseases from time to time.

" We pledge ourselves, therefore, to give in every instance which may fall under our care, an authentic name for the fatal disease.

" And we entreat all authorized practitioners throughout the country to follow our example, and adopt the same practice, and so assist in establishing a better registration, in future, throughout England; for which purpose we invite them to attend to the subjoined explanatory statement, in which they will see set forth the

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provisions of the recent statute, and the means whereby the important object we have recommended may be most effectively attained."

The Registrar-General circulated copies of this letter, together with a covering explanatory statement, to all the authorised medical practitioners throughout England and Wales whose addresses could be obtained. The covering statement pointed out that the register books contained a column in which the cause of death "*may* be inserted." Therefore all medical practitioners in attendance on a last illness were earnestly recommended to hand to the person whose duty it was to give information of death to the registrar, a *written statement* as to the cause of death, which statement could be shown to the registrar. Directions as to the form which the statement should take followed.

The result of these efforts to obtain voluntary medical certificates as to the cause of death were considered to be very satisfactory, even for the first half-year. By 1846 the Registrar-General was able to report that out of over 10,000 qualified medical practitioners only about 50 had refused to return the cause of death "for various personal and trivial reasons." The Registrar-General added, "I have determined not to attempt at present to compel the few medical practitioners who have refused to sign certificates, to return the cause of their patient's death, as although they may have diplomas it is probable that the information they would be induced to furnish would be of little comparative value and might mingle errors among the facts spontaneously supplied by enlightened, accurate observers." One wonders if this sarcastic effort was read by the delinquents, and, if so, if they were much moved by it, knowing, as they did, that the Registrar-General had no power to compel them to give certificates. Compulsion only came into force in 1874. In the report of 1846 the Registrar-General also states that he had given instructions that no certificate as to cause of death should be received from an unqualified or uncertificated person. Apparently, if the practitioner in attendance refused to give a certificate, or if there had been no qualified doctor in attendance, the cause of death was not returned. It is only since 1914 that the absence of a medical certificate involves a report to the coroner.

It was obvious that the success of registration would depend greatly upon the personnel of the Central Registry. Though the local officials were appointed by the Guardians, the service from its nature, was highly centralized and the work of the registrars was necessarily controlled by the Registrar-General. Moreover, much important work had to be done within the central office. Chadwick wanted Babbage to be the first Registrar-General, but the office was made the subject of patronage. The first to hold it was W. H. Lister, a society novelist, who had already held several government appoint-

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ments; upon his death in 1842, George Graham succeeded to the post. Chadwick¹, however, obtained the appointment of William Farr as chief statistical officer, who was responsible for the valuable statistical abstracts issued annually and for the explanatory statements which accompanied them. Chadwick's biographer hints that Farr was Registrar-General in all but name, but there was a whole side of the work in which neither Chadwick nor Farr were interested, and the hint is very likely unjust. Moreover, Farr is said not to have been notable either for his tact or his administrative ability, and someone organised the office upon proper lines, placated the medical profession, and inspired the local officials with zeal.

The new officials learnt their job in doing it and managed not to antagonise the public, in much the same way as did the factory inspectors and the new police in their respective spheres. The Act indeed enjoyed much greater success than it would appear, on paper, to have deserved. Probably the queer makeshift mixture of central and local administration, of permanent officials paid by the piece, of nominal compulsion, without penalty for non-compliance, and of an important official function carried out by voluntary effort, worked better than a more logical and drastic scheme would have done. The whole circumstances of the passing of the Act, the form which it finally took, and the manner in which it was administered, were alike typical both of the nation and of the age which produced them.

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¹ Chadwick's biographer states that Chadwick obtained the appointment of Farr, but the notes on Farr in the D.N.B. say that Farr owed his appointment to Sir James Clark. The two statements are not necessarily incompatible.

The Legislative Functions of Government Departments

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THE question which I am to raise and to discuss is not: What are the legislative functions which Government Departments do, as a matter of fact, exercise? This is a purely technical question, and is one concerning the legal powers possessed by various departments. It is primarily, therefore, a question for the legal expert, and is accordingly outside the scope and competence of the present paper. What I wish to discuss is something less technical and more general. I want to raise a question concerning the relation between Public Departments and the community or body of citizens. The questions which have to be kept in view are such as these: Do Government Departments actually exercise legislative functions? Is there an increasing tendency for them to do so? If it is so, what is the reason for it, and is that reason the same as saying that it is desirable for them to do so? The idea of desirability will take us beyond the departments themselves, their needs, and their point of view into considerations of the point of view and the needs of the citizens. From the side of political theory the question is not a new one. It is the age-long question of the nature of government, of the basis of government, and of the relation between governing authorities and the governed.

Before proceeding further, it may be advisable to say something about political theory. I do not claim that political theory is in some peculiarly privileged position to prescribe, without regard to experience and the specific problems which arise in social life and which confront the administrator, what developments should or should not take place. I conceive it as possible that political theory might have to be greatly revised in the light of certain actual developments. There is nothing infallible about its pronouncements or conclusions. What the political theorist can do, however, is to analyse any actual developments in political and social life, examine their implications, and, trying to take a wider view than those actually engaged in any

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particular branch of administration, relate one development with its implications to other developments and to other factors which play a part in social life in order to discover whether the procedures, ideas, and beliefs are or are not consistent in all spheres and, if necessary, to construct a view which will, if not completely, at any rate as far as possible, effect a harmony in ideas and in practice. The administrator is concerned with one special problem or duty usually in relation to the citizens; but the citizen, on the other hand, has multifarious duties arising from his relation to many different spheres of administration, and has in addition various interests of his own, partly professional, partly social, which may be summed up as making a living and living a life dear to his own heart. The political theorist is really endeavouring to emphasize the need of a certain kind of harmony between the various spheres of life which must in the end be a life of harmony and of a certain kind on the part of individual citizens.

With this explanation, I proceed to the consideration of my specific subject. There has appeared in ever more marked form a tendency in English legislation to which many writers like Dicey, Lowell, Sir Courtney Ilbert, who, as Clerk of the House of Commons, had ample opportunity of observation, and just at the moment Lord Hewart, whose opinion on account of his legal position and eminence as a lawyer must be given great weight, have drawn attention. That tendency is to pass legislation of a general and even vague kind, and to embody in it clauses giving powers to the relevant department to construct and issue orders dealing with details and even to alter or modify the legislation as the department or nominally the head of the department may think fit. It is not necessary for my purpose to enumerate the various cases where such powers have been given to government departments. I only specify a few cases and a few opinions in order to make clear the point under discussion, and I am in any case relying on authorities and quoting from them. In an Act of 1897 the Secretary of State is empowered to alter the table of fees prescribed in the Metropolitan Police Act of 1839. The Companies Act of 1908 empowered the Board of Trade to vary the tables and add to the forms in the schedules; the Trade Boards Acts of 1918 authorized the Minister of Labour to apply the Act, by Special Order, to trade other than those affected by the original Act of 1909. The Aliens Restriction Amendment Act of 1919 extended and prolonged certain powers conferred upon the King-in-Council by the Aliens Restriction Act, 1914, and empowered His Majesty in Council to repeal the Aliens Act of 1905 and to incorporate any of its provisions in an Order-in-Council. The Education Act of 1902 conferred powers upon Local Education Authorities by Section 7. The National

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Insurance Acts of 1911 and 1913 (Sections 66, 67 and 88 (1) of Act, 1911) conferred powers upon the Insurance Commissioners and other officials. The Finance Act (1910) conferred powers upon the Commissioners of Customs and Excise and the Commissioners of Inland Revenue. The Home Office, the Ministry of Health, and so on, have, under various Statutes, powers to issue Orders for the purpose of giving effect to the Statutes. Lord Chief Justice Hewart, in his book "*The New Despotism*," just published, cites numerous cases of this kind. I quote just one of his cases from the Rating and Valuation Act, 1925. "Section 67 provides that if any difficulty arises in connection with the application of the Act to any exceptional area, or the preparation of the first valuation list for any area, or otherwise in bringing into operation any of the provisions of this Act," the Minister "may by order remove the difficulty." Further, the Minister may "constitute any assessment committee, or declare any assessment committee to be duly constituted, or make any appointment, or do any other thing, which appears to him necessary or expedient for securing the due preparation of the list or for bringing the said provisions into operation." And still further, it is provided that "any such order may modify the provisions of this Act so far as may appear to the Minister necessary or expedient for carrying the order into effect." I quote also the words of the Chairman of the Board of Customs before a Royal Commission: "The work of a taxing department to-day is an absolutely different thing from what it was twenty or even ten years ago. In those days Parliament, when it fixed a tax, settled every detail, leaving to the department only the administration of the tax on the lines laid down by Parliament. The tendency of Parliament nowadays . . . is to lay down only principles, leaving matters of difficulty to the discretion of the department. I think it fair to say that a department like mine nowadays exercises powers which are often judicial and which sometimes get very near being legislative." (Fourth Report of the Royal Commission on the Civil Service, 1914, Cd. 7338, p. 28.)

As the nature of such legislation has provoked severe criticism in some quarters, it is necessary to be quite clear as to what is the point at issue. The words quoted from the evidence of the Chairman of the Board of Customs illustrate the difficulty; it is that a government department may exercise both legislative and judicial functions. The questions to be kept in mind then are: is criticism directed or to be directed against the granting of *legislative* powers to government departments? (amending of an Act is a legislative function), or is the criticism directed against the granting of *judicial* powers to government departments? Or is it directed against the granting of *both legislative and judicial* functions together to a department? Or

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is it directed against any special conditions under which government departments are allowed to exercise legislative and judicial functions? To illustrate this last point I quote Laski,¹ who in his turn refers to Dicey's² view. "It is not less significant," he says, "that both Insurance and Development Acts have given quasi-legislative and fully judicial powers to Commissions who are expressly excepted from the ordinary rules of law." All these questions imply a distinct but different point at issue, and criticism will simply become confused if the various points are not kept clear.

II

To find some answer to these questions it is necessary to consider some ideas of traditional political theory. The ideas relevant to the subject of discussion are the nature of legislation or of legislative functions, the doctrine of the separation of powers, and the conception of the rule of law. These ideas require also to be considered in relation to the actual conflicts which occurred historically and the theoretical solution of which is expressed in these ideas.

The question about the nature of legislative functions involves something more than a mere quibbling about words. According to traditional political theory—Hobbes, Locke, especially Rousseau, Austin, and others—legislation is a function characteristic of and inherent in one definite body called the Sovereign. With Rousseau that sovereign is the people. Legislation is *the* act of sovereignty. According to this conception of sovereignty and of law, which is the creation of the sovereign, there can be no legislative functions exercised by any person or body of persons other than the sovereign. There can be no such thing as delegated *legislation*. Such a conception of sovereignty and of law has become embedded in political and legal theory, and it is one factor which affects many writers in their approach to the questions which we have just enumerated. Its influence is seen in the juristic view that law is a command of a supreme or sovereign body; and its strength depends on the need of obtaining a clear and definite answer to the question: Is such and such a thing a law? And the answer is obtained by finding out whether that thing has been made by the sovereign body in accordance with a certain constitutional procedure.

Sharply distinguished from legislative power is executive power. "When I walk towards an object," says Rousseau,³ "I must first will to go to it; in the second place, my feet must carry me to it. Should a paralytic wish to run, or an active man not wish to do so, both will remain where they are. The body politic has the same

¹ Authority in the Modern State, p. 72.

² Law and Public Opinion (2nd Ed.), xxxix-xliv.

³ Social Contract, III, i.

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motive powers; in it, likewise, force and will are distinguished, the latter under the name of *legislative power*, the former under the name of *executive power*."¹ Rousseau is here applying rigorously the doctrine of the separation of powers which Locke states and to which Montesquieu,² basing his observations on the English system, drew attention, and which has been, and still is, the subject of much discussion. Executive power—that is, government in one sense—is merely an agent for carrying into effect the law enunciated by the Legislature. The executive body can never *legislate*. It is essential to the very nature of legislating and executing that the two functions should be *separate* as well as distinct; and they remain separate by their being performed by distinct bodies.

There is a third function concerning which Rousseau's theory does not give much help, but which, though no doubt often confused in the minds of people with the executive or administrative body, has been by political theory and law clearly distinguished from it. This is the judicial function, and a unique social value has been attached to it. It is plainly necessary, says Marriott,³ to keep "the judicial functions of government separated, as clearly as may be, from the executive and legislative functions it is plainly desirable to separate the judiciary from the legislature in order that there may be no confusion between the question as to what the law is, and what the law ought to be. It is, moreover, of supreme moment to the maintenance of justice in the Commonwealth that law should be applied according to an established and impartial method of interpretation. This end is more likely to be attained . . . if those who apply the law are not also responsible for its enactment. Not less important is it, as already indicated, that the judicial power should be separated from the executive. Nothing . . . can be of greater moment to the individual citizen than that the executive should be kept within the restraints of law. Yet these restraints can hardly be expected to be effective unless the question whether acts done by executive officials are or are not illegal can be referred—in the last resort—to the judicial decision of some organ independent of the executive." This is the view also taken by Sidgwick⁴ and most other writers.

The principles which have been formulated in the past and which arise from what has been said, may, for our present purpose, be concisely summarized. First, there must in any fairly advanced community be a definite law-making body, which in the performance of its function must follow a publicly known and accepted procedure. This body is the legislature; to it alone belongs the power of making

¹ *L'Esprit des Lois*.

² *Mechanism of the Modern State*, II, pp. 298-9 *inter al.*

³ *Elements of Politics*.

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laws and of revising, amending or annulling existing laws. Secondly, no one shall be judge in his own cause. This is essential to the securing of impartial judgments, and hence points to the need of an independent and separate judiciary. Thirdly, there is what Dicey has called the "rule of law," which he holds to be the most distinctive feature of English life, and contrasts with the French system of ordinary law plus administrative law (*Droit administratif*). Dicey reduces this "rule of law" to three propositions, which concisely stated come to this: no person can be punished except for a proved offence against the law; every person, whatever his position or function, is subject to the same system of law and legal procedure, and what is called the Constitution is not the source of personal rights but a consequence of them as defined by law and enforced by the courts. These statements express the spirit of English law very baldly and involve a great deal more. According to the English system of justice an offence must be *proved* against a person charged with it; he must be informed in clear and precise terms of the nature of the offence, and the evidence against him must be produced in his presence, so that he may know what it is and have an opportunity of rebutting it. All this in turn requires that the law be such that the nature of illegal acts be defined in precise terms, so that persons may know exactly what they can legally do and not do. It requires also the formulation of rules of evidence, embodied in a legal procedure—a matter that in view of the widespread ignorance of the nature of evidence in the popular mind is most important in preventing a person from being condemned by *ex parte* statements.

I do not claim that these principles have a nature so fundamental in the constitution of the universe as, say, the law of gravitation possesses. They express rather safeguards and checks which the citizens of this country in particular have found necessary, and have devised in the light of conflicts between themselves and their rulers. It is past experience that constitutes their greatest justification. They imply a distrust of executives and administrators, and a view of political life as a system of checks and balances. The idea which underlies them is that they constitute the safeguard to the liberty of the subject. It is for this reason that the separation of legislative functions, executive functions, and judicial functions has been emphasised, and it is for this reason that appointments to the Bench have not been allowed to remain with the political government or executive. (See Lord Hewart's "The New Despotism.") The judiciary are not agents of the political government, but constitute an independent state-function concerned with the interpretation and application of an established law to individual cases, each of which must be fully investigated.

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III

I shall now proceed to consider these principles and their relation to the contemporary tendencies previously noted. According to the traditional conception of legislation, no government department does or can legislate in the strict sense, and this would also mean that it was incapable of amending or altering laws. According to the doctrine of the separation of powers or functions, no government department is capable of exercising a combination of two or more functions—especially judicial functions, such, as has been seen, have been asserted to be exercised by the Board of Customs, and also by other departments or bodies. According to the rule of law every government department and every public official is or ought to be subject to that same law to which every citizen is subject, and is subject to the jurisdiction of the same courts as those to which the ordinary citizen is amenable.

This is the traditional view followed by those who oppose the contemporary developments in political administration. To such opposition civil servants might reply that there is no question of their making certain acts into offences, and that all they do has and must have legislative authority. If there is any fault to be found, it lies not with the departments concerned, but with Parliament.¹ And it must be admitted that the reply has force. As regards public departments the state of affairs would seem to be in no way different from that created by the investing of certain companies or corporations like railway companies, universities, and so on, with certain powers. All alike derive their powers from some statute, charter, or enabling Act. Why should public departments be singled out for critical opposition on account of powers to make rules and orders conferred on them when other bodies are left alone?

Is the opposition provoked not by the powers of making rules or orders but by the procedure followed in enforcing these rules or orders? This raises a judicial question; but it is necessary once more to be clear about the exact point at issue. Is the opposition to the tendency to set up special courts or tribunals to deal with points of dispute in administration of departmental orders, these tribunals being additional to the Ordinary Courts? This tendency is regarded as an innovation in the English system, and is considered to be following the lines of French administrative law. Yet, as has been pointed out,² the legislature must be assumed to create competent tribunals, and, on the assumption of competence, the creation of such tribunals must be regarded as an enlargement of the judicial system, involving

¹ See JOURNAL OF PUBLIC ADMINISTRATION, Oct., 1927, p. 406 esp.

² Marriott, *op. cit.* JOURNAL OF PUBLIC ADMINISTRATION, July, 1927, p. 287.

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fresh and special courts for new specialized business. The existing judicial system now consists of courts which have become identified with special legal questions, and no new principle seems therefore to be involved. It might even be said that the existing courts of law had an origin very similar to those tribunals which are now being established.

Or is the opposition due to the fact that either judicial powers have been conferred upon public departments through some of its officials or else the tribunals created are in too close contact with the departments concerned, a tribunal being practically a body of officials? Why should this fact, however, provoke criticism and opposition, seeing that there are corporations or institutions like universities within which there are bodies that exercise judicial functions. Every business firm makes regulations for its workmen and staff, and itself gives decisions on its own regulations. The ground of criticism does not seem, therefore, to be merely the fact that departments give judicial decisions based on regulations of their own making. It is true that a difference may seem to exist between private firms or corporations and public departments in that the orders in question of the latter affect persons other than the members of the departmental staff. This difference, however, is not altogether easy to draw. The ordinances and regulations of universities, for instance, affect not the staff but at least a section of the public. A decision by the management of a stores or shop to close at certain hours affects the public.

There remains a final possibility to be considered. The opposition may really turn upon the nature of the legislation conferring powers upon departments conjoined with distrust of all such departments. This distrust is a factor which has its roots in history and cannot be ignored. It has been the factor which has led to emphasis upon the separation of functions and an independent judiciary. Now a great deal of legislation at the present time is extremely vague, the departments being allowed to do what they consider necessary or expedient. There is no possible definition of the necessary or expedient. The department is left to give a decision on that point, for its decision must obviously be final. The ordinary courts are in the nature of the case powerless to act as a bulwark or a safeguard on behalf of a citizen who feels himself aggrieved. They may have no power to consider the case at all, or, even if they have, they may be helpless in the face of the vague and indefinite powers conferred by Acts of the legislature upon the departments. Vague and indefinite legislation is bad legislation; it leaves the citizen in ignorance of what he has and has not a right to do. Lord Chief Justice Hewart draws attention in the case of the Rating and Valuation Act, 1925, to this defect.

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Even if the court should have decided against an order of a department on some legal ground, such as being *ultra vires*, that decision could have been regarded by the department concerned as creating a "difficulty" which the department was given powers to remove by order. This is what Lord Hewart refers to as the lawlessness of public departments. The whole procedure is lacking in those qualities which have come to be considered as essential in law.

But the criticism and opposition go further than merely the belief that public departments are ready to avail themselves of any vagueness or lack of specification in a law to assume powers. The remedy for this would be greater care on the part of Parliament. But it is just here that the growing opposition to the character of legislation and to the increasing powers of departments has its bases. Legislative proposals are at the present day generally initiated by the Cabinet and put before Parliament. These proposals are also generally drafted by one or other of the departments; and this means that the department has identified itself with these proposals which may be taken as expressing the departmental view or departmental demands. It may be admitted that these proposals have behind them a considerable amount of inquiry and a considerable mass of relevant information. But, even so, the fact remains that the traditional theory of the working of the parliamentary system does not hold. According to that theory a party adopts and expounds a policy, gets returned to political power, passes legislation embodying its plans, and imposes upon the relevant departments the task of carrying out that legislation. Now it appears that legislation is itself fundamentally the work of the departments. The enabling Acts which confer upon them their powers are their own creation; and opposition to the whole modern tendency comes back to this, that departments are themselves responsible for the vagueness of their enabling Acts and, in fact, there is ground for believing that they deliberately aim at such vagueness and its consequent mystification. Lord Hewart again quotes a case which supports this belief; a short time ago a revenue judge, protesting against the bewildering nature of the legislation in spite of his being an expert himself, was given the answer by the Crown's Law Officer that "it would not be possible to get the Bills through the House of Commons in any other form."

Hence, before proceeding further, it is advisable to see how the question of the legislative functions of public departments stands. According to traditional theory the whole development at the present time, manifested in the increasing powers of such departments, is dangerous, and at any rate should occur only under enabling Acts carefully and precisely drafted and containing the right of appeal by aggrieved citizens to the ordinary courts, that is to tribunals in-

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dependent of the departments concerned. But, as we have seen, the developments are not exactly of this nature. To all intents and purposes legislation is the work of the departments, even the enabling Acts, while the departments exercise judicial powers directly or else through statutory bodies closely in association with the departments. Now, either these developments ought to cease or else traditional theory will have to be discarded or at least modified. In traditional theory of politics or even of the Constitution, no function is assigned to public departments such as that which they are actually exercising. Which alternative is to be adopted? Let us proceed to some considerations relevant to this question.

IV

What I want to do is to draw attention to some factors which require to be noticed in this connection. It is widely admitted that the work undertaken by the State in recent years has enormously increased, and in consequence that a heavy burden has been thrown upon government departments. Not merely the work of the latter has increased, but its *kind* has also altered. The tasks of administration are now such as to bring the administrator up against the varied relationships of the citizen and the complexities of social life. The older conception of the State as a law-making and law-enforcing body no longer conforms to political facts. The State no longer stands merely for an order which it seeks to define in legal terms, and strives to maintain. This traditional function of the State, by many regarded as the *sole* function, has become widened, because the conception of legal justice has been seen to involve the wider conception of social justice. The State has now assumed the additional character of an organization striving to secure certain *services*—education, health, etc.

Bosanquet, in his "Philosophical Theory of the State," says that this development is in accordance with the law of political parsimony: "two organizations will not survive when one can do the work." This law, he says, is always tending to expand the political unit. The fact seems to me rather to be that where existing organizations fail to do their work, people turn to the State calling upon it to undertake the work; and they do so because they believe that the State has some unique power and resources guaranteeing success where others have failed. I believe that this notion about the State is mistaken; but I content myself with suggesting that the controversy about the powers of public departments as well as about the functions undertaken in the name of the State has its roots in the causes which interfere with the proper functioning of economic and social organizations, and which lead ultimately to action by the State and State agencies. I do not see how the latter can operate more effectively

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in the long run than other agencies, so long as the factors at the root of the trouble are allowed to remain. If these factors were removed I suspect that the controversy of State versus non-State organizations, or of the powers of public departments, would fizzle out. I mention this in order to make clear the limits within which my further remarks are valid.

Given the fact that the State has been under some kind of necessity in undertaking many new tasks, what consequences follow? The old conception of the State was that of a sovereign body to which the individual stood as subject, and this relation was defined as obedience to its sovereign law. But this conception has been altered so far as to admit of additional relations between individuals and the State. The relation of the State to a considerable number of persons becomes that of employer to employed, and to a very great number of other citizens it is a contractual one, the State undertaking to fulfil various services. These two new relations are quite distinct and quite distinct from the old one; but their conjunction in the one body is a source of confusion. This is seen, for instance, in the controversy as to whether State employees can form trade unions, and particularly whether they can go on strike.¹ The doubt is due to the fact that three distinct relations are involved, and they are not so far reconciled. It is quite clear that the idea of sovereignty cannot be fitted very easily, if at all, into the working of the services undertaken by the State. It is to this idea of sovereign power that the State can always resort in an extreme difficulty, and it is that idea which gives the State that additional force which no private organization can ever have. But it is able to do so by playing one relationship off against another. And it is the mixture of the relation of sovereignty and subject with the other relations that confuses the character of government and departments. This carries with it also the fact that legislation in the old sense as an act of a sovereign body is no longer adequate to express the relation between the State and subject, and in consequence is no longer adequate to express what is demanded or required by government departments. If the term "legislation" is still used it must be radically re-interpreted.

A further consequence of the assumption of additional tasks by the State is that the legislature is becoming increasingly less fitted to perform the work of legislation. One way in which this appears is an inability to construct laws containing specific details. It finds it increasingly difficult to formulate a law which will meet all the complexities of actual life. It has to resort to a form of law which is a kind of skeleton outline to be filled up by those who are in touch with

¹ Other cases are where the State obtains services or goods from citizens, and asserts that any compensation is an "act of grace."

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the concrete details. This is the difficulty which has led to the assigning of powers to government departments. Another way in which the weakness of Parliament appears is the enormous amount of work falling upon it. Parliament has become overburdened, and hence the need of assigning some of its tasks to other bodies. Such work is tending to fall upon government departments, though an opponent of this tendency might hold that these departments are not the only bodies that might be considered. The weakness appears, thirdly, in the fact that social life has, through the development of scientific knowledge and its application to human life, changed its character greatly since, say, the latter part of the eighteenth century. The problems of the legislature have become highly complicated technical questions and require for their solution very specialized knowledge. It is questionable whether the average Member of Parliament is sufficiently well informed or technically equipped to deal with many of these questions. Hence, again, Parliament is apt to allow itself to be guided or influenced by the experts of the different departments.

Now all these factors may suggest a favourable case for additional functions being assigned to such organizations as government departments. But this at once raises a problem of political reorganization. It raises a question of the function of Parliament. I do not mean merely that Parliament should continue as it does, and insist upon certain checks upon proposed departmental orders such as a requirement that a draft of the proposals should be laid before Parliament and that these do not become operative until definitely approved by resolution of the Houses, or in the requirement that the regulations when made must be laid immediately before both Houses for the knowledge of Parliament and for criticism, or in the provision that if within so many days after they have been made and laid before Parliament an address is presented praying for their annulment, they may be annulled by Order in Council.¹ These checks imply examination and supervision by Parliament, and the difficulty that Parliament has to face is just efficient supervision. The whole point of the proposals is to relieve Parliament of its severe pressure, and this the scheme fails to do. I do not suggest that assigning greater powers or special additional functions to government departments is the only solution. The pressure on Parliament could be relieved and more adequate supervision given to proposed legislation if, for instance, special committees of Parliament were established to deal each with the affairs of one of the departments, and such committees would be composed of Members of Parliament specially qualified to deal with a special set of problems. As many would object to any committee system because of inherent dangers such as wire-pulling,

¹ See JOURNAL OF PUBLIC ADMINISTRATION, *op. cit.*, Oct., 1927, p. 410f.

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secret influence and so on, the committees would have to meet and debate openly as Parliament does.

But the question remains whether the departments concerned can be left out of consideration. They will have the task in any case of carrying out the law, and the law presumably aims at accomplishing something. The departments may say that in the light of their experience certain things aimed at by the law cannot be accomplished by the administration of the law as it stands. What then? If the departments have their way, we have practically departmental legislation, or else we shall have legislation that cannot be administered. It seems to me essential to admit that the departments are most favourably placed to decide about the administrability of proposed legislation, and hence upon the nature of the legislation. Why not therefore devise a scheme in which departments will legislate with regard to their own problems? The main problem will then be to devise some means of rendering departments accountable or responsible. This is the crucial difficulty. The departmental personnel are not popularly elected, and it is probably highly undesirable that they should be subject to the fluctuations of the polls. But the problem of control is one inherent in any form of government. What guarantee is there that Parliament will not become oppressive in its legislation? How far is it the function of Parliament to carry out the will of the people, supposed to be expressed at the polls, and how far is its function that of securing, on the basis of accurate knowledge and information, the good of the country. Is it preferable to be badly governed by oneself to being well-governed by others? These are questions which I shall not attempt to answer at present, though they are relevant to the general question at issue.

It appears to me that public departments are on the point of knowledge and experience just as likely as, if not more than, other bodies to strive after the good of the country; and their honesty and sincerity are no more open to question. The fear that they will, and in fact do encroach on the liberty of the subject is one that might equally be felt with regard to Parliament; but it seems to me that that danger lies not in the powers that would be conferred upon the departments but in the requirement that they attain certain objectives and attain them within certain limitations set by social circumstances which tend to act as a handicap. So long, however, as the fear exists, and so long as the possibility of danger is admitted, it is necessary to devise a check. Much of the difficulty can be, and no doubt is, obviated by the good sense of administrative officials. Apart from that, a twofold check can be established. There is the general supervision and the co-ordination of laws which would remain the function of Parliament, and there is the test provided by the

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question, how far is the department efficient, and efficiency would be tested by the extent to which the department was solving its problem (without creating new ones) and how far it was doing so without creating social friction and without throwing unreasonable burdens on the citizens.

All this involves a change in the conception of sovereign power and of legislation. Law ceases to be regarded as a command of a sovereign body, and becomes a formulation of a means to a social objective or of a solution to a social problem, recommended on the basis of careful and expert diagnosis. This is the essence of the new view of law that is being expounded by Pound in America, and to some extent by Duguit in France and Laski in this country. The introduction of the idea of social objectives or of reference to a specific social problem reduces the somewhat vague idea of responsibility to some specific test; and serves to give point to all appreciation or criticism. In consequence, of course, the meaning of democracy and of parliamentary elections would have to be re-interpreted. The people obviously are not capable of expressing informed opinions about most of the conundrums propounded at election times. If my boot pinches, I take it to a shoemaker and tell him so; it is his business to find out why it does so and to remove the cause of the trouble. It is so, too, with the doctor and my stomach-ache. It is not my business to learn all about shoes, to find out the cause of the trouble, and to give instructions to the shoemaker. The matter is analogous in political life. An election is really a procedure intended to find out the wishes, the needs, desires or difficulties of citizens. Parliament is a committee of the people elected to issue instructions to the respective departments to attend to these wishes and difficulties. It is the business of the departments to carry them out, the means being left to them, subject to any fundamental general principles that Parliament may find necessary to enunciate in order to secure co-ordination of laws and effort.

The Present System of Municipal Government in the Irish Free State

By Professor T. A. SMIDDY

[*Speech at Institute of Public Administration Lunch, 4th April, 1930*]

THE time at my disposal is not at all adequate for an exhaustive analysis of the system of municipal government in the Irish Free State. I must assume that members of the Institute of Public Administration are already aware of the administrative divisions and municipal duties prescribed in the Local Government Act of 1898. I shall confine my remarks to a brief—I fear inadequate—explanation of the major changes introduced into municipal administration since the establishment of the Dominion of the Irish Free State.

The general scheme of reformation of municipal government in the Irish Free State stands on two legs: (1) local centralization; (2) central selection of local officials.

By local centralization I mean the reduction of the number of local authorities and the concentration of their duties in a county authority. The minute subdivision of districts and duties provided by the Local Government Act of 1898 led to inefficiency and overlapping. The first step in this direction was taken early in the life of the Irish Free State—in 1923, and had reference to poor relief.

Since the Local Government Act of 1898, poor relief in workhouses was established in each poor law union. This scheme was altered in 1923 and the administration centralized under one authority in each county. One central institution for the poor was established in each county. In view of the extreme prejudice in Ireland against the poor-house—the “big” house—and the preference exercised of begging and almost starving rather than entering the workhouse—restrictions on outdoor relief were abolished by the 1923 Act (Local Government (Temporary Provisions) Act (No. 9), 1923), and any person entitled to poor relief may be given it in his own home.

Two years later, by the Local Government Act (No. 5) of 1925, rural district councils were abolished, and their powers and duties transferred to the County Council. The whole basis of the administration of rural public health was reformed and one rural sanitary authority established in each county, the County Board of Health; the chief Medical Officer being a whole-time officer responsible for the

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administration of the sanitary laws. So much for the centralization in the county of local administration.

The making of appointments has been entirely centralized by the Local Authorities (Officers and Employees) Act, 1926. A complete change was then made in the method of appointment of local officers and selection was centralized in a Commission of three independent persons appointed by the Government. These Local Appointment Commissioners must be approached by every local authority before an appointment is made and the Commissioners recommend a suitable person. The object of this is to eliminate local influence in the making of appointments. The selection of candidates is, by the statute, made by competitive examination except in cases where this method of recruitment is open to objection. Simplification, unification, economy and efficiency were the aims pursued by my Government in its reformation of Local Government.

A matter which has attracted more public interest is the replacement of elected bodies by paid Commissioners. The City Corporations of Dublin (86 members) and Cork (56 members) were dissolved and replaced by Commissioners—three in Dublin and one in Cork. This was not despotic action on the part of the young Government; it was, in a sense, popular action, reflecting the dissatisfaction of the people with the old system and the general feeling that the persons responsible for city administration should be easily identifiable and not a collective group whose individual obligations could not be stated with certainty. The results of the City Commissioner system of municipal government have been remarkably good. Not only have the services been improved—housing, sanitation and cleansing—but the cost of administration has been considerably reduced. The Dublin City rates were reduced from 19s. 2d. in 1924/25 to 17s. 2d. in 1925/26, and to 16s. in 1926/27 and 15s. 6d. in 1927/28. (In parenthesis, these poundages are not comparable with rates-poundages in this country because there is no quinquennial revaluation system in the Irish Free State and the valuation to which the poundages are applied is a pre-war valuation.) Altogether 11 local authorities were dissolved and replaced by Commissioners.

This was regarded by the Government as a temporary measure to effect an immediate improvement in city administration and to give time for the planning of a permanent organisation. In 1929 an Act was passed (Cork City Management Act, 1929) which re-established the Lord Mayor, Aldermen and Burgesses of Cork as the Cork Corporation. The Corporation is constituted of 21 members as against 56 in the old body. The plan of the statute is to separate policy from administration, and while policy is vested in the democratically chosen body, subject to the guidance of the Central Depart-

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ment of Local Government and Public Health, administration is entrusted to a City Manager. You who have studied the evolution of the parliamentary system are aware that the mainspring of development was the control of public funds. In the Cork scheme, the skilled administrator prepares estimates in advance of the year, and these are submitted to the Corporation which, having power to make any rate or borrow, can alter or amend the estimates as it thinks good. The power of the purse is in the hands of the local parliament of Cork, and it is saved the trouble of administration. The public can fasten on to one paid official responsibility for inefficient administration. The Corporation can suspend the Manager and, with the sanction of the Minister for Local Government, remove him. It is a method of combining the broadness of democratic government with the minute efficiency of the skilled city administrator.

Cork City has a population of 78,490. The City Council was dissolved in 1924. Between 1924 and 1929 the City Manager, as an experiment, acted in place of the dissolved Council. There was therefore an interval of about five years between the dissolution of the old elected Council and the coming into operation of the Council-manager plan during which time the electors had the opportunity of seeing the application of the new idea of individual responsibility for efficient municipal management. In one sentence let me express my view of the Council-manager system. Its efficiency and success depend almost entirely on the human factor. Policy and management are more clearly separated in a definition than in the practical application of a definition. There is, in practice, a shading of the one into the other. The personal relations between manager and Council are of first-class importance.

There is no "last word" in local administration, as students of public administration know. Experiments are not to be denounced because they are new. A system of local administration which is successful in one country may be unsuitable when local conditions are different, and mere conventional copying is likely to result in wasteful administration. One provision in the Cork Act bears witness to this truth. The Act makes provision for the transfer of duties from the Manager to the Council, or *vice versa*. A resolution supported by two-thirds of the Council and approved by the Minister suffices to make such a transfer. If, therefore, the system defined in the statute proves to have weaknesses, there is a simple means of remedying them without the need of recourse again to the central legislature.

A somewhat similar scheme is embodied in a Bill, dealing with the municipal government of Dublin, but as this Bill is at present the subject of political discussion, it is not my place to do more than indicate the outlines. Under the Bill the boundaries of the city of

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Dublin will be extended. In the government of the city, according to the provisions of the Bill, a manager will be associated with an elected council. The same supervisory power and financial control possessed by the Corporation of Cork is preserved, in the Bill, to the proposed Corporation of Dublin. A novelty in the Bill is the proposal that of the 25 Councillors (the old Corporation contained 80), 4 shall be elected by commercial electors, that is to say, occupiers of business or professional premises, of whom a separate register will be kept. The commercial electors will not each have only one vote in electing their four business representatives, but the number of votes will depend on the valuation of the occupied premises—less than £50, one vote; £50 to £100, two votes; £100 to £150, three votes; £150 to £200, four votes; £200 to £250, five votes; £250 or over, six votes. Assuming the existence of such a form of municipal government in Dublin, constituted of 21 councillors elected by the ratepayers, 4 councillors elected by business interests, and a full-time, life-appointed, salaried expert city manager, how may the system be expected to work in practice? Again, everything depends on the spirit with which the individuals regard the government of the city. All three elements in the proposed Dublin City Government Bill have moral, as distinct from their written, duties. The 21 councillors will need to appreciate that the 4 business representatives are capable of giving expert opinion as the mouthpieces of commercial, manufacturing and professional interests; and that they are in the Council as a help and not as an opposition or a hindrance. In their attitude to the City Manager they must show confidence in him as in a trusted servant, permit him freedom, as to a competent and expert administrator, such as must be given to one who has the responsibility of managing a large capital city like Dublin. The 4 business members of the Council will have a grave responsibility to broaden their vision away from their particular business interests to the general business interests of the city of Dublin—a difficult thing for a business-man, maybe, but only difficult if he fail to appreciate his representative character. They will give their considered advice, aiming at helping the Council to devise policy in the interest of the whole population. Towards the manager they may be expected to show the same goodwill and extend the same co-operation as the board of any big company would to its managing director. Turning to the manager, the exercise of considerable tact will be required in Dublin as in any other city in the world where a new system of government is being tried out. The manager's loyalty to the elected Corporation must be unquestionable, and it should be the aim of an efficient manager to avoid any set of circumstances which would involve him in any opposition of loyalty as between his notions of efficient administration and the policy of the Corporation.

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RELATING PAY TO WORK IN THE PUBLIC SERVICE OF THE UNITED STATES AND CANADA

By FRED TELFORD, Ph.B., M.A.

*Secretary, Civil Service Assembly of the United States and Canada;
Director, Bureau of Public Personnel Administration; Lecturer in
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IN his article "Classifying the United States Civil Service" in the October, 1929, number of *PUBLIC ADMINISTRATION*, Mr. G. H. Stuart-Bunning comments upon the difficulties inevitably involved in interpreting any movement in one country to interested persons in another.

It is clear that the report "Classification and Compensation Plans" failed to convey its true meaning even to so astute and well informed a reader as Mr. Stuart-Bunning. This, then, must be my excuse for venturing a further explanation of those plans for the information of English readers.

The public personnel group in the United States and Canada, as well as in Australia, New Zealand, and some of the other British Dominions, do not accept *in toto* the traditions and practices of the British Civil Service system as ideals to be copied without modification. We see much that is admirable in the British system, but at the same time certain features which we are careful to avoid.

To mention first those things which seem to us worth copying, we in the United States envy the British tradition that the public service is worthy of the talents of the very best citizens. As Mr. Stuart-Bunning points out, many though by no means all of those in the United States believe that a really able man or woman can best devote his or her talents to business enterprises and may well avoid the public service. We in the United States also regard with envy the relation between the political parties and the permanent service which has been evolved not only in Great Britain, but also in considerable part of the British Dominions; we think it unfortunate that when a different government comes into power in the United States many of the administrative experts, as well as some of the rank and file, must go in order to make places for those alleged to be in sympathy with the new administration. A good many of us think the position of the Treasury in the governmental structure is one that

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we might well copy in our own public service; certainly we have not evolved any satisfactory method of tying up the budget and financial, the personnel, the purchasing, and the system and planning work with which every government must concern itself. Other features of the British system of lesser importance commend themselves to us.

On the other hand, there are some things in the British system which we wish to avoid. Some of us have a feeling, for example, that the high type British civil servant with whom we are acquainted is probably secured in spite of, rather than because of, the method of recruiting; we suspect that the tradition as to the best serving the state, the practice of building up a permanent body of administrators not subject to change with governments, and the relatively liberal rates of pay for civil servants as compared with those of equal ability in commercial organizations may account in considerable part for the high grade personnel secured, and that the system of recruiting for entrance and for making promotions in the service may actually be an obstacle in the way of securing and retaining a really high grade personnel. Certainly, having tried a quite different system ourselves, we would not want to go back to the British type of examinations which was generally discarded here a good many years ago. Nor in the United States are we ready to accept the dictum that, once "established," the civil servant must be kept and protected in the service indefinitely; we know that our methods of selection and promotion are faulty, that the promising recruit frequently in practice proves to be a "dud," and that the state as an employer must protect itself from the mistakes it has made in recruiting by getting rid of the misfits, the incompetents, and the drones. We even go so far as to believe that the university trained engineer, physician, or accountant probably can best serve his state, his profession, and himself by weaving in and out of the public service as he advances in his profession, working in positions in the public service, in large commercial organizations, or even as a private practitioner as seems to him best at various stages in his career. We want also to avoid the attitude of many British civil servants that anything which has been done in a certain way for a long time is *ipso facto* sacrosanct, and in its place to cultivate the spirit of letting serviceability to the public, rather than tradition, determine methods and practices.

Above all, in the United States and Canada, we look askance at the British custom of not relating pay closely to work. In our public service, we find that many of the young men and women who, on entrance, give great promise of brilliant performance in practice do not rise to their opportunities and cannot be given duties to perform which justify any except very modest rates of pay. In other cases, we have a plethora of brilliant material and find ourselves unable to

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assign to all of the able persons in the service duties and responsibilities which would justify high rates of pay; though capable of doing responsible work, they must confine their activities to the performance of more or less routine tasks because the number of higher positions is limited. In neither case are we willing to advance the maximum rates of pay beyond definitely fixed limits simply because these men and women have certain qualifications, because they are capable of doing better work, because they have served long and faithfully, or because of their real or alleged needs. We think that those doing low grade work should receive corresponding rates of pay; that those doing work of moderate responsibility should receive medium rates of pay; and that only those whose duties and responsibilities are exacting should be paid the highest rates. Moreover, we are not willing to believe that through any accidental chain of circumstances such factors as the education of the incumbent, his seniority, or the periodical appraisals of his work by the department head and his assistants afford a sufficient basis for determining what his pay should be. We are insistent on knowing exactly what his duties and responsibilities are, the efficiency with which he performs them, and other factors having a bearing. We think, finally, that salary and wage levels need frequent adjustment upward or downward because of changing fiscal policies and changing employment and economic conditions. To accomplish these ends, we have found it necessary to set up the type of machinery described in the report regarding which Mr. Stuart-Bunning commented, and which we believe he misunderstood.

The thirty-two page pamphlet labelled "Classification and Compensation Plans: Their Development, Adoption, and Administration" is a serious attempt to reduce to writing the principles and practices which have been found efficacious in actually making the rates of pay for those in the public service correspond closely to the difficulty and importance of their duties and responsibilities, to current fiscal policies, and to changing economic and employment conditions. As Mr. Stuart-Bunning points out, there is little that is new in it; as a matter of fact, it purports to be nothing more than a formulation of the principles and practices which have been evolved in the British Dominions and in the United States in the last twenty-five years. It was not prepared with the idea that it could or should be adopted either by the Federal Government of the United States, by the Dominion of Canada, or by any province, state, or city. Instead, it sets forth what any public jurisdiction should do, as far as our accumulated experience is a guide, when it attempts to ascertain and record the duties and responsibilities appertaining to individual positions; to group into classes those positions which are nearly

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enough alike so that they can be treated alike in determining pay, in recruiting, and in other employment processes; and actually to determine what proper rates of pay are for each class of positions. The statement was prepared, not by an outsider or by a layman, but by a number of those in the United States and Canada who have spent years of their lives on the staffs of Civil Service commissions or other agencies concerned with the operation of public personnel systems.

The need for such a document, couched as far as may be in authoritative terms, is compelling. In the United States at the present time serious attempts are being made in various jurisdictions to relate the pay of large numbers of those in the public service to their duties and responsibilities and to fix salary and wage levels on planes which, as far as possible, are fair alike to the state as an employer, to the taxpayers who foot the bill, and to the officers and employees in the public service who are affected thereby. The Personnel Classification Board of the United States is working on the final stages of a report upon which the rates of pay of some 125,000 persons in the Federal service are expected to be based. The City of Philadelphia is just starting a study looking toward a revision of the rates of pay for some 21,000 persons. The legislature of the State of New York has just authorized and directed a similar study for some 25,000 persons in its service. The State of Ohio for about a year has been trying to develop classification and compensation plans which will establish proper rates of pay for some 10,000 to 12,000 persons. The State of California is beginning a study which will affect the rates of pay of at least 10,000 of its employees. The City and County of San Francisco are struggling with a plan for fixing the rates of pay of 6,000 to 8,000 persons. Many other public jurisdictions are concerned with these and closely related matters. It is, therefore, of the highest importance that the legislative bodies, the budget and personnel authorities, and the technical experts who struggle with these problems should have at hand for their guidance an authoritative, succinct statement of the principles which ought to be observed, of the practices which have been found efficacious in undertakings of this sort, and of the results which they have a right to expect when a given plan for handling salaries and wages has been set up.

The Civil Service Assembly of the United States and Canada, in preparing its bulletin on classification and compensation plans, has attempted to supply this need by pooling the experience of its members, evaluating the procedures and results they report, and formulating a statement as to principles and practices which represents its best thought. These principles and practices are based upon a conception somewhat different from that which prevails in the British Civil Service and, therefore, would apparently not be fully

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applicable therein. They do, however, represent, as far as is humanly possible, the best thought of those in the United States, Canada, Australia, and New Zealand who have given serious thought to the means by which the rates of pay for those in the public service can be closely related to the duties they perform, the responsibilities they exercise, and the efficiency which they show in doing their work.

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Town Government in Massachusetts, 1630-1930

(Humphrey Milford, Oxford University Press.) 11s. 6d.

THERE was a time when a good deal of interest was taken in the direct democracy of some of the Swiss cantons. In New England direct democracy has been proceeding for some centuries, under conditions much more akin to those of our own.

The present volume is an interesting description of the method by which the towns (a term which in the United States may be applied to any small place; a place of size is termed a city) of Massachusetts have governed themselves by full assemblies of the local citizens at which are decided matters of policy, sometimes even matters of detail, and the election of "selectmen" and other officers to carry out the work of local government.

The most interesting part of the book is the historical account of recent developments and the description and analysis of present conditions, but the whole story is instructive.

It is suggestive to note the similarity between the government of these towns right down to recent times, and indeed in several instances even to-day, to those which prevailed in the old English villages. Much ink has been spilled as to the origins of the New England form of town government, and while it has its indigenous characters which "grew by the exercise of English commonsense combined with the circumstances of the place" (Professor Channing), yet it is inconceivable that the early settler did not act, consciously or unconsciously, on experience gained in the mother country.

But the most outstanding facts are the persistence of government by town's meeting in the present day (even in large "towns," many with a population of over 10,000, and one, Brookline, with a population of from 30,000 to 40,000), the strong attachment to the old form of government which still persists, and the endeavours to adapt it to modern conditions by the device of a "limited town's meeting," where the representative principle is applied by the appointment of representatives from districts, but in large numbers (from 200 to 300), forming a convention rather than a council, meeting only on a few occasions in the course of a year to decide matters of policy

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or to make appointments, and with a right of speech (this is one of the most interesting facts) to any elector, though he has not a vote unless he is a representative. Of the 69 towns, however, with a population of 6,000 or over, only 15 have adopted the limited town's meeting, the others still clinging to the full town's meeting, and one of these others (Framingham) has a population of over 20,000 persons; and the author points out that it is only with reluctance that the full town's meeting has been abandoned at other places.

Many suggestive matters emerge from this study of a system of ancient lineage but alien in many ways to modern notions. Incidentally, it would have been advantageous if the author had brought out more clearly for the benefit of those not familiar with the structure of local government in New England the relation of the town's meeting to the numerous Boards appointed for local administration.

N.

Mastering a Metropolis: Planning the Future of the New York Region

By R. L. DUFFUS. (Harper and Bros.) 10s. 6d.

THERE is a tale of a man who added hat to hat upon his head until his life became a stilted penance for his craze. That is in large measure an image of the modern very large town.

If we could but see ourselves clearly, what arrant fools we would write ourselves down, because we build for ourselves cities of surpassing size and organisation with marvels of ingenuity beyond belief—and with the result, for instance, that for a large proportion of the population no small part of life is spent in travelling, often with acute fatigue, from place of sleep to place of work. Truly a wonderful consummation! And yet the problems of the very large town are scarcely appreciated outside of a narrow circle, and those who insist that we must solve them, for our salvation if for no other reason, are generally dubbed Utopians.

The most comprehensive study of urban growth and problems which has ever yet been made is that for the New York Region, under a scheme largely inspired by one of the splendid men of big business and big public spirit in which the United States is prolific, the late Charles D. Norton, with means provided by one of the rich foundations, endowed by private wealth, with which also the States are provided, the Russell Sage Foundation, which has provided, I believe, a total of about £250,000 for the work. Would that just a few thousand pounds were made available in this country of ours; under proper direction we could make good use of it.

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The present volume is a summary of the reports produced by experts in the course of this survey, and its reading is commended to those interested in urban problems who have not the leisure or the opportunity of perusing the instructive detailed reports which have been issued. It would open the eyes of some of our public men to what urgently requires to be done for Greater London.

The book is issued under the auspices of the Committee which was responsible for the detailed survey and contains an interesting summary of the problems and proposals which emerge from the exhaustive investigation of the New York Region, though, for public appeal, it lacks that inspired fire of faith which Burnham gave to his plan of Chicago, a faith which still persists and is steadily making Chicago one of the most remarkable of modern big cities.

N.

"Public Borrowing"

By PAUL STUDENSKY, Ph.D.
National Municipal League

THE issue of this book by the Lecturer in Public Finance in New York University comes at a peculiarly appropriate time. Practically every phase of public borrowing is dealt with, and there are raised concretely those borrowing problems which have been engaging attention in Great Britain in post-war years. Mr. Studensky's discussion of the relative merits of the all-loan as against the pay-as-you-go policy demands serious consideration. His apt summary of the position is worth quoting:—

"The advocates of an extreme 'pay-as-you-go' policy usually emphasise the need for economy and retrenchment in public expenditures; whereas the advocates of an extreme all-loan policy emphasise the benefits to be derived from the execution of new public works. . . . Hence, the blending of borrowing with taxation may be necessary in the financing of capital expenditures, to save the state or community from falling into either pitfall."

It is refreshing to gather that at least in one phase of activity America has something to learn from Great Britain, where the consolidation of all loans raised by a local authority into one fund has been a feature of the financial organisation of certain British municipalities for many years. One does not wish to be unduly critical, but the author does not seem to reach his usual high level in dealing with this question. Some of us think that the "Banking Principle" can be applied to local authority borrowing to a greater extent than has hitherto been done. If this is to take place then there should be no

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confusion of thought, and it should be clear that there is no necessary connection between the periods which are appropriate for the writing down of expenditure on lasting improvements and the periods for which loans are raised. The author's theories that capital expenditure should be redeemed on the basis of the ability of the borrowing authority to repay rather than with reference to the economic life of the asset created are rather novel in the light of the practice in Great Britain. The average term of repayment of loans prevailing in the example given—Massachusetts—is phenomenally low, the term for repayment of loans for the construction of, for example, public buildings, being 20 years.

The author's study is not without its constructive contribution towards the solution of borrowing problems. His idea, speaking broadly, is that taxation should take care of a normal annual amount of expenditure on lasting improvements, and that borrowing should be resorted to only for financing the excess over that normal. Examples are given of the manner in which the normal ratio is to be ascertained, the main idea apparently being that changes in the character and responsibilities of the locality will be adequately allowed for.

"Under this plan, the authorities would obtain an elastic, moving standard which would truly represent the normal trend of development of government at all times, and which would indicate, at any given time, to what extent the expenditures deviate from the normal."

It is realised that fundamental to the author's plan is the need for an annual budget, carefully prepared, and he also recognises, what every practical financial officer in this country does, that a change over from an all-borrowing policy even to the compromise which the book suggests must be gradually accomplished.

Altogether the work raises many novel points, and is worthy of the serious attention of those interested in public finance.

J. D. I.

Budgetary Control in America

Public Budgeting. By A. E. BUCK. pp. x + 612. (Harpers.) 21s.

THIS is a very big book. Its author is an American specialist in budgeting. The question that first suggests itself to the reader is how it is possible, even for a specialist, such as he, of long and wide experience in the construction of budgetary systems, to write so big a book about them. The road to the answer can perhaps best be indicated by an example. If our Chancellor of the Exchequer, being

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wishful to reduce the provisional total of his Estimates by £x millions, should decide to adopt the American way of doing it, he would summon to the Albert Hall the "Business Organisation of the Government." Armed with the reports of the Bureau of the Budget, supported by the presence of its Director, by the efforts of a military band playing appropriate Budget music, and by the knowledge that the proceedings were being followed on the wireless by millions of expectant taxpayers and the Press, he would briefly expound the financial position of the nation and his aspirations as to the figure at which the forthcoming budget should be balanced. The Director of the Budget would then take up the tale and the thousand or more directing civil servants who composed the audience would learn what was expected of them and the cuts that would have to be made. Clubs would be formed among them: we hear of the "Two per cent. Club," the "One per cent. Club," the "Correspondence Club"—formed Mr. Buck tells us, "to spur up the output of Government stenographers," the "Woodpecker Club," and lastly, and a little ominously, the "Federal Casualty Club" whose purpose was to save \$12,500,000 by suppressing vacancies.

These administrative devices, as Mr. Buck rather mildly calls them, are, he points out, attempts to find some means of making the President's Budget policy effective in the absence of genuine budgetary control. Odd as they sound to our ears, disciplined by generations of effective financial control, they serve to illuminate the basic problem of the American financial system—the problem of creating financial control when the Executive and Legislative powers are constitutionally separated. "The general trend of thought and practice in the United States," we are told, "is definitely away from the idea that the budget should be determined as to maximum amounts, as well as formulated by the Executive."

Another aspect of the same problem emerges in the struggle now proceeding between the Federal Bureau of the Budget and the General Accounting Office for the position occupied in this country by the Treasury. The former, essentially an instrument of the Chief Executive, finds the Treasury field largely occupied by the latter, which, though only eight years old, already costs \$4,000,000 a year, has a staff of nearly 2,000, and is in Mr. Buck's view destined to become the national department of finance. It is outside the control of the President and his departmental heads. Thus the hard distinction between the executive and the legislative powers finds its parallel distinction between the preparation of the budget and its execution or observance.

The scope of this study is very wide, for it covers not only the federal budgetary system but also those of the 51 States and Terri-

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tories and the innumerable county and city authorities. It is largely taken up with budgetary technique. We find interesting survivals of the primitive, such as the practice in some States and Cities of requiring all Estimates to be sworn to by a responsible officer of the spending agency, which, as Mr. Buck justly observes, seems wholly unnecessary, since swearing does not make them any more accurate. In some Estimates the names of the regular employees are printed—a practice which our author rather significantly defends. We note that in the Federal budgetary system "virement" is practically unknown.

The book is a mine of information, rather overladen, to British eyes, with unimportant detail and specimen forms, but containing much shrewd criticism and some useful pieces of analysis, such as that of classification systems, and that of the various kinds of "appropriation." No one will dispute the author's conclusion that "public budgeting in the United States is still in the early stages of its development." He leaves us, however, with the uneasy feeling that in the absence of some constitutional change that development will lie in the direction of elaboration rather than effectiveness.

H. N. B.

Other Books Received

"Schools, 1929," published by Truman & Knightley, Ltd.; price 2s. 6d.

Contents:—

Introductory; Classified List of Schools in Great Britain; Detailed Information Regarding Public School for Boys; Choosing a School; School Announcements; Special Schools; Index to Principals of Schools; Schools on the Continent; Index to Displayed Announcements.

"Evasion in Taxation," by A. Victor Tranter; published by Routledge & Sons, Ltd.; price 6s.

Contents:—

Definitions and Introduction; Psychology and Philosophy of Evasion; Extent of Evasion—Aggregate Amount of Evasion; Extent of Evasion—Dispersion of Evasion; Forms of Evasion—Legal Evasion; Forms of Evasion—Illegal Evasion; Forms of Evasion—Evasion by Delayed Payment; The Scope of Existing Remedies; The Future; Appendix:—Interest Charges on Arrears of Taxes Abroad; Scheme for Imposing Interest on Income Tax Arrears; The Financial Act, 1927.

"How to Appeal Against Your Rates in the Metropolis," by G. F. Emery, LL.M.; published by Effingham Wilson; price 5s.

Contents:—

Origin of the Poor Rate; The Union; Extent of the Metropolis for Rating Purposes; The Valuation Lists; Gross Value and Rateable Value; Quinquennial Valuation Lists; Notice to Occupiers of Increased Assessment; Effect of the Quinquennial Valuation Lists; Objections to Valuation Lists; Notice of Objection; The Assessment Committee; Meeting of the Assessment Committee; Effect of a Pending Appeal; Supplemental Valuation Lists; Objections to Provincial List; Effect of a Provincial List; Appeal from Assessment Committee to Special Sessions; Appeal to Quarter Sessions; The Poor Rate; Unoccupied Property; Outgoing and Incoming

Public Administration

Occupiers' Liability for Rates; Occupiers for Short Terms; Small Tenements—Composition for Rates; Tithes; Advertising Stations; Machinery and Plant; Exemptions from Rateability; Rate Statistics; Imperial Taxes on Real Property; Appendix:—Forms; Statutes and Orders Made Thereunder; Index of Cases Cited.

Self and Society Booklets.

Since our review of this series (see January 1929 issue) the following have been received, price 6d. each:—

13. "Parliament and the Consumer," by A. V. Alexander, M.P.
14. "The Making of an Educationist," by Albert Mansbridge, M.A.
15. "Twenty Faces the World," by Percy Redfern.
16. "Everyman's Statistics," by J. W. F. Rowe, M.A., M.Sc.
17. "The Wilderness of American Prosperity," by Le Roy E. Bowman, A.B.
18. "The Nation and Its Food," by Rt. Hon. C. Addison, M.D., F.R.E.S.
19. "Labrador's Fight for Economic Freedom," by Sir Wilfred Grenfell.
20. "Art and Everyman," by Ivor Brown.
21. "The Consumer in History," by Prof. Elizabeth Levett, M.A.
22. "Agriculture—Industry's Poor Relation," by George Walworth, M.A., Dip. Agric.
23. "Old and New Japan," by Dr. Ogata.
24. "Capital, Labour and the Consumer," by Prof. Daniels, M.A., M.Com.

